FEED-IN TARIFF PROGRAM

FIT RULES
Version 1.3.1

July 2, 2010

RULE CHANGE

BEHIND-THE-METER FACILITIES ARE NO LONGER PERMITTED UNDER THE FEED-IN TARIFF PROGRAM.

In-series metering is no longer permitted in the Province of Ontario. As a result, Behind-the-Meter Facilities are no longer permitted under the Feed-In-Tariff Program. Detailed FIT Rule amendments will follow.

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SECTION 1 – INTRODUCTION

1.1 Background to the Feed-In Tariff Program

The Ontario Power Authority has developed this Feed-In Tariff Program for the Province to encourage and promote greater use of renewable energy sources including wind, waterpower, Renewable Biomass, Bio-gas, landfill gas and solar (PV) for electricity generating projects in Ontario. The fundamental objective of the FIT Program, in conjunction with the *Green Energy and Green Economy Act, 2009* is to facilitate the increased development 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 of any size, except for waterpower Projects which are subject to a maximum capacity of 50 MW and solar (PV) Projects which are subject to a maximum capacity of 10 MW.

Projects that are 10 kW or less in capacity can apply under the *micro*FIT Rules and should refer to the Website, 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 10.

The OPA will maintain an application package, including the application form, the 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 Appendix 1 – Standard Definitions attached to this document and available on the Website.

1.2 Participation in the FIT Program

To participate in the FIT Program, Applicants must be willing to make necessary investments in their facilities, including the connection and metering costs, 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 its generating facility for a long-term 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. Applicants must also acknowledge the important role that effective consultation with aboriginal communities may play in the successful planning, development and operation of generating facilities and must be prepared to undertake their appropriate role in such consultations and address the interests or concerns of such communities in good faith and in compliance with Laws and Regulations.

Although the FIT Program and the *Green Energy and Green Economy Act, 2009* 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 Capacity Allocation Exempt Facilities and that are otherwise eligible to participate in the FIT Program may not be able to obtain a FIT Contract immediately and will instead be reserved until conditions change, as further set out in Section 5 these FIT Rules.

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 solar (PV) Projects and 50 MW in the case of waterpower Projects. In the case of an Incremental Project, the Incremental Project together with the Existing Generating Facility to which it is incremental shall not exceed these size limits;

(iv) in the case of solar (PV) Projects that are not Rooftop Facilities and that have a Contract Capacity greater than 100 kW (alone or in the aggregate with all other solar (PV) Projects that are not Rooftop Facilities and that are located on the same property as the property on which the proposed generating facility is located), not be located on:

(A) CLI Class 1 Lands, CLI Class 2 Lands or CLI Class 3 Lands that have not been designated on the Website as Class 3 Available Lands, unless any such lands were zoned by the applicable municipality to permit non-agricultural uses as of October 1, 2009; or

(B) Specialty Crop Areas;

(v) not be an Existing Generating Facility at the time of the Application, unless it is an Incremental Project, in which case only the Contract Capacity relating to the Expansion or Upgrade is eligible;

(vi) connect to a Distribution System, a Host Facility or the IESO-Controlled Grid; 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 (which, for greater certainty, includes Standard Offer Contracts), or other form of contract relating to Electricity or Related Products relating to such proposed facility (a "**Prior Contract**"), unless such Prior Contract was terminated prior to March 14, 2009 or more than 12 months before the date that an Application in respect of such proposed generating facility was submitted to the OPA.

(A) In determining whether a proposed generating facility that is the subject of an Application is the same facility as a facility that was the subject of a Prior Contract, the OPA will consider whether the proposed generating facility utilizes substantially the same technology and involves any portion of the same site as the facility that was the subject of the Prior Contract.

(B) A Prior Contract shall not be considered to be terminated unless the Applicant has a written notice setting out the effective date of such termination, signed by all parties to the Prior Contract. An Applicant must provide such notice to the OPA within 10 Business Days of any request.

(b) For any single Property, the total Gross Nameplate Capacity of all solar (PV) generating facilities participating in the FIT Program and located on such Property may not exceed 10 MW. For any single Property, the total Gross Nameplate Capacity of all waterpower generating facilities participating in the FIT Program and located on such property may not exceed 50 MW.

(c) Only one Project of each Renewable Fuel type shall be permitted on a single Property, except as otherwise set out in the *FIT Guidelines: Multiple Projects on One Property* policy document prepared by the OPA and available on the Website.

(d) For the purposes of Sections 2.1(a)(iv), 2.1(b) and 2.1(c), in determining whether Projects and Facilities are considered not to be on a single Property, the OPA will consider, among other things, whether such Projects or Facilities are situated on,

(i) lands that may be separately conveyed by deed or transfer for a period of more than 50 years, in accordance with Part VI of the *Planning Act* (Ontario) excluding conveyances permitted only by Sections 50(3)(c), 50(5)(b), or 50(17)(c) of such act;

(ii) provincial or federal Crown lands that are the subject of separate applications to the Crown for Access Rights; or

(iii) lands that are "reserve lands" or "special reserves", as set out in the *Indian Act* (Canada), where the permission to use such lands is granted by way of separate resolutions of the applicable "band council".

(e) Although it is not an eligibility requirement for purposes of an Application, Applicants should be aware that, pursuant to the FIT Direction, the FIT Contract will require that windpower Projects and solar (PV) Projects achieve a Minimum Required Domestic Content Level.

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, or is an Applicant Related Person to, the owner or operator of the Existing Generating Facility or Planned Generating Facility to which it is incremental.

(b) An Incremental Project in respect of an Existing Generating Facility 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)(v) and 2.1(a)(vii).

(c) An Incremental Project shall make use of the Existing Generating Facility's or Planned Generating Facility's connection to a Distribution System, the IESO-Controlled Grid or a Host Facility, as applicable, subject to any upgrades or modifications that may be necessary.

SECTION 3 – APPLICATION REQUIREMENTS

3.1 Application Materials

(a) An Applicant must provide with its Application a certified cheque, bank draft or money order payable to the Ontario Power Authority in an amount that is the greater of (i) $0.50 per kW of proposed Contract Capacity, subject to a maximum of $5,000, and (ii) $500, which fee is inclusive of GST and 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 Capacity Allocation Exempt Facility must provide security with its Application, payable to and in favour of the "Ontario Power Authority" in the amount of:

(i) $20 per kW of Contract Capacity, in respect of PV Projects, or

(ii) $10 per kW of Contract Capacity, in respect of all other Projects,

in the form of a certified cheque, bank draft, money order 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, substantially in the form attached as Exhibit A (the "**Application Security**"). If the Application is accepted and the Applicant is offered to enter into a FIT Contract, the Application Security will be returned to the Applicant upon the OPA's receipt of the Completion and Performance Security, in accordance with Section 6.1(d). 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. Where the Application is in respect of an Aboriginal Participation Project or a Community Participation Project, the amount of Application Security will be as set out in Section 9.

(c) All Applicants must provide an authorization letter in the applicable Prescribed Form. The authorization letter must be addressed jointly to the OPA, the IESO, and the LDC (as applicable), and signed by the Applicant and the Host Facility (if applicable). It authorizes the LDC (as applicable) and the IESO to provide to the OPA any and all information relating to the Applicant or the Project, the Host Facility (if applicable) 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 must include the following connection details regarding the Project: (i) Contract Capacity, (ii) Renewable Fuel(s), (iii) proposed Connection Point, (iv) other information relating to the Connection Point, including distribution feeder designation and voltage, transmission circuit, distribution station or transformer station, as applicable, and (v) such other information as may be required by the FIT application form, as applicable. An Applicant, other than in respect of a Capacity Allocation Exempt Facility or a Behind-the-Meter Facility, may request to proceed directly to the Economic Connection Test, rather than specify connection details, in which case the Application will be processed in accordance with Section 5.2(b).

(e) An Application must include evidence that the Applicant has either title or rights of access to the Site, sufficient to build, operate and maintain the Project, enforceable

by contract for the term of the FIT Contract ("**Access Rights**"). Such Access Rights may include a lease, option, letter of intent, memorandum of understanding or other grant conditional only on (i) the Applicant entering into the FIT Contract and (ii) the Supplier under the FIT Contract being issued Notice to Proceed.

(i) Where an Application is in respect of a Project on provincial Crown lands, the Applicant shall be deemed to have the necessary Access Rights for these purposes where:

(A) the Applicant has submitted a completed application to the Ministry of Natural Resources (Ontario) for selection as an "Applicant of Record" in respect of all lands comprising the Site, pursuant to such ministry's applicable *Site Release and Development Review* policies and procedures; and

(B) the Applicant has submitted to the OPA, an "MNR Application Status/Fact Sheet" or an "MNR Applicant of Record Status Letter", and an "MNR Application Map", which (A) for windpower Projects, both outlines in red and lists each of the MNR grid cells that will be required for the Project, or (B) for waterpower Projects, clearly shows the site and the associated "MNR Site ID Number".

(ii) Where an Application is in respect of a Project on federal Crown lands, the Applicant shall be deemed to have the necessary Access Rights for these purposes where it has a "Priority Permit" issued pursuant to the *Dominion Waterpower Act* (Canada), or equivalent binding commitment from the federal Crown.

(iii) Where an Application is in respect of a Project on "reserve land" or "special reserves", as set out in the *Indian Act* (Canada), the Applicant must have a resolution of the applicable "band council(s)" granting permission to develop the Project.

(f) An Applicant must provide the OPA with a valid e-mail 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. Applicants must regularly check the "My FIT Homepage" for messages and notices from the OPA. The OPA will not be responsible for an Applicant's failure to comply with this provision.

(g) Where an Application is in respect of a solar (PV) Project with a Contract Capacity greater than 100 kW that is not a Rooftop Facility, the Application must include evidence, satisfactory to the OPA, of the Canada Land Inventory designations or zoning applicable to the Site.

(i) If the Site was zoned for agricultural uses as of October 1, 2009, such evidence must include a map from the Canada Land Inventory showing the Site, Canada Land Inventory classification, and that part of the Site where the Project is proposed to be located.

(ii) If the Site was zoned to permit non-agricultural uses as of October 1, 2009, such evidence must include (A) a municipal zoning map showing that the Site was entirely zoned for non-agricultural purposes on October 1, 2009,

and (B) written confirmation from the municipality's Chief Planning Official or clerk certifying that the Site was entirely zoned for non-agricultural purposes on October 1, 2009.

3.2 **Prior Impact Assessments**

This Section 3.2 shall not apply to Applications in respect of Capacity Allocation Exempt Facilities.

(a) Pursuant to Section 2.3(c) of the FIT Contract, Applicants in respect of Projects other than Capacity Allocation Exempt Projects shall not be permitted to apply for an Impact Assessment until the Impact Assessment Priority Start Time, but may apply anytime thereafter. Provided that such an Applicant applies for any necessary Impact Assessments prior to the Impact Assessment Priority Stop Time, no Supplier that was offered a FIT Contract after such Applicant was offered a FIT Contract will be permitted to apply for an Impact Assessment prior to the Applicant.

(b) Where an Applicant has applied for an Impact Assessment prior to submitting an Application, the Applicant must rescind any such Impact Assessment, and must terminate any Connection Cost Agreement in respect of its Project, prior to applying to the FIT Program, unless physical construction of the connection asset relating to such Impact Assessment had commenced as of September 24, 2009 by or on behalf of the LDC. For greater certainty, physical construction does not include engineering or design work. Any such Applicant must provide evidence to the OPA of the rescission, termination, or commencement of physical construction, as applicable, within 10 Business Days of any request.

(c) A Project will be considered the same facility as one that was the subject of a prior Impact Assessment where such Project utilizes substantially the same technology as was proposed to be used by the facility that was the subject of the original application for such Impact Assessment, and no changes to the facility have been made that would necessitate a new Impact Assessment.

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 accordance with instructions 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 and a reference number. A copy of the application form, the Application Fee, Application Security (if applicable), schedules, attachments and other documents specified in the FIT Application

Instructions must be delivered in hard copy format to the OPA at 120 Adelaide Street West, Suite 1600, Toronto ON, M5H 1T1, Attention: Feed-In Tariff Program, no later than five Business Days after the electronic submission of the Application, and in accordance with the specific details set out in the FIT Application Instructions. The reference number must be clearly marked on the envelope containing the hard copy materials and on all of the hard copy materials.

(b) If the OPA does not receive all the required materials by 5:00 p.m. local time on the fifth Business Day after the day the Application was submitted electronically, any hard copy materials will be returned to the Applicant and the Time Stamp and reference number on the electronic submission of the Application will be forfeited.

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 e-mail within 10 Business Days of the date of such request, or by such other means and within such other time frame as may be 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 OPA or its advisers in any respect. The Application Fee will not be refunded in such circumstances.

(d) Where an Application that is not in respect of a Capacity Allocation Exempt Facility 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 5. The OPA may, in its discretion, contact an Applicant to discuss amendments to a Project, but where an Applicant declines to make any such amendments, it shall be without prejudice to the unamended Application.

(e) Where an Application in respect of a Capacity Allocation Exempt Facility has been accepted as having met the requirements set out in Section 2 and Section 3, the OPA will offer a FIT Contract in accordance with Section 6.1(a).

(f) Where an Application has been rejected, the OPA shall give reasons for rejecting the Application and shall return the Application Security, if any, within 20 Business Days of providing such notice. 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 issued a new Time Stamp and reference number at the time of

resubmission and shall be subject to the FIT Rules and FIT Contract in effect at the time of resubmission.

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

SECTION 5 – CONNECTION AVAILABILITY MANAGEMENT

5.1 Connection Availability

(a) The OPA, in consultation with the IESO, applicable LDCs, applicable Transmitters and other agencies and stakeholders as appropriate, will identify, publish on the Website and update at least semi-annually the Transmission Availability and Project Status (TAPS) Tool. All interested Applicants are urged to consider the TAPS Tool and consult with the applicable LDC or Transmitter prior to submitting an Application to determine the likelihood that and the timeline within which their Project can be connected.

(b) When the OPA determines that an Application is complete following receipt of any clarification, additional information, documentation and statements required by the OPA in accordance with Section 4.2(b), it will provide notice to the Applicant. The OPA's target for processing Applications in accordance with Sections 5.2 and 5.3 is 60 days following such notice, provided that where an Application is in respect of a Project in a region for which the Economic Connection Test is in progress or is about to be run, the OPA may take longer than the target time for such processing.

5.2 Transmission Availability Test

(a) Upon the acceptance of an Application that is not in respect of a Capacity Allocation Exempt Facility in accordance with Section 4.2(d), the OPA, along with the IESO and applicable Transmitters, will determine whether the Transmission System has sufficient connection resources to accommodate the connection of the Project, taking into consideration Planned In-Service Transmission Developments; all prior Applications that have been processed; Applications in the FIT Production Line and FIT Reserve with an earlier Time Stamp; and any other generating facilities that are existing, committed or are the subject of a ministerial direction.

(b) If the analysis set out in Section 5.2(a) determines that there are insufficient Transmission System resources to connect the Project, or if the Applicant has requested to proceed directly to the Economic Connection Test rather than specify connection details, the Application will be subjected to the next Economic Connection Test, together with all other Projects whose Applications are awaiting the Economic Connection Test. Unless an Application is already in the FIT Production Line, the Applicant may withdraw it from the FIT Program prior to the submission of their Application to the next Economic Connection Test by providing written notice to the OPA, in which case the Time Stamp and application reference number will be forfeited and the OPA will return the Application Security to the Applicant within 20 Business Days.

(c) Where a Project is to be directly connected to the IESO-Controlled Grid or to a Host Facility on the IESO-Controlled Grid, if the analysis set out in Section 5.2(a) determines that there are sufficient Transmission System resources to accommodate

the connection of the Project, the OPA will offer a FIT Contract in accordance with Section 6.1(a).

5.3 **Distribution Availability Test**

(a) Where a Project is to be connected to a Distribution System or to a Host Facility connected to a Distribution System, and if the Transmission Availability Test has determined that there are sufficient Transmission System resources to accommodate the connection of the Project, the OPA will coordinate with any applicable LDCs and confirm such LDCs' determination as to whether the applicable Distribution System has, or will have sufficient connection resources to accommodate the connection of the Project, taking into account all prior Applications that have been processed; Applications in the FIT Production Line and FIT Reserve with an earlier Time Stamp; and any other generating facilities that are existing, committed or are the subject of a ministerial direction. For greater certainty, all Projects subject to the Distribution Availability Test are also subject to the Transmission Availability Test, as distribution-connected Projects may also require the use of Transmission System resources. Where an Application in respect of a Project to be connected to a Distribution System does not specify a Connection Point, it is deemed not to pass the Distribution Availability Test.

(b) If the analysis in Section 5.3(a) determines that there are, or will be prior to the Milestone Date for Commercial Operation that would be applicable to a Project, sufficient Distribution System resources necessary to accommodate the connection of the Project, the OPA will offer a FIT Contract in accordance with Section 6.1(a).

(c) If the analysis in Section 5.3(a) determines that there are OEB-approved plans for the construction of the Distribution System resources necessary to accommodate the connection of a Project, but such resources are not planned to be in service prior to the Milestone Date for Commercial Operation that would be applicable to such Project, then the Applicant will be sent a Production Line Confirmation in accordance with Section 5.4(c)(iii).

(d) If the analysis in Section 5.3(a) determines that there are not currently, nor has the OEB-approved plans for the construction of, the Distribution System resources necessary to accommodate the connection of a Project, the Application will be subjected to the next Economic Connection Test, together with all other Projects whose Applications are awaiting the Economic Connection Test. Prior to this, the Applicant in respect of such Application will be permitted to change or delete the proposed Connection Point without impacting their Time Stamp.

5.4 **Economic Connection Test**

(a) The Economic Connection Test will be run for each region of the Province at least every six months. The intent of the Economic Connection Test is to ensure that costs of connecting a Project that would be ultimately borne by rate-payers are reasonable in light of the best available information regarding ongoing transmission developments and other proposed generating facilities. The Economic Connection Test will assess the economics related to the investments necessary to connect proposed new generation, to the extent that such investments will be allocated to Transmitters, and ultimately passed on to rate-payers in accordance with the Transmission System Code.

(b) As part of running the Economic Connection Test, the OPA will determine if since the completion of the previous Economic Connection Test there has been a change in the resources available to accommodate the connection of any Projects as a result of new Planned In-Service Transmission Developments, a previously allocated connection resource that has become available as a result of the cancellation of another Project, a previously unallocated connection resource that is no longer available as a result of being allocated to a new generating facility, new LDC plans in accordance with the Distribution System Code for the construction of Distribution System resources, sufficient progress in the construction of Distribution System resources, or otherwise. In such case, the OPA will provide an Offer Notice in accordance with Section 6.1(a). Projects will be assessed in order of Time Stamp such that, to the extent that multiple Projects require the same connection resource, Projects with an earlier Time Stamp will have priority over Projects with a later Time Stamp.

(c) Upon the completion of the Economic Connection Test, all Applicants whose Applications were submitted to the test will be provided with a notice from the OPA stating the outcome of the Economic Connection Test (the "**Economic Test Notice**"). The outcome of the Economic Connection Test for each Project submitted to the test as a result of not passing the Transmission Availability Test will be either:

(i) The Network Upgrades associated with the Project are deemed to be economic. If the Application was not previously in 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 B within 20 Business Days of receiving the Economic Test Notice, to enter into the FIT Production Line. If the Applicant does not return a 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 20 Business Days. If the Application was previously in the FIT Production Line, it will remain in the FIT Production Line in accordance with Section 5.5.

(ii) The Network Upgrades associated with the Project are not deemed to be economic. The Application will be placed in, or will remain in, as applicable, the FIT Reserve, to be re-evaluated by the Economic Connection Test during the following iteration, in accordance with Section 5.4. If the Application was previously in the FIT Production Line, and as a result of a significant change in circumstances the Network Upgrades associated with the Project are no longer deemed to be economic, it will be moved to the FIT Reserve in accordance with this Section, and any previously at-risk Application Security shall no longer be at-risk.

The outcome of the Economic Connection Test for each Project submitted to the test as a result of not passing the Distribution Availability Test will be either:

(iii) There are LDC plans in accordance with the Distribution System Code for the construction of the Distribution System resources necessary to accommodate the connection of the Project, but such resources are not planned to be in service prior to the Milestone Date for Commercial Operation that would be applicable to such Project. If the Application was not previously in 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 B within 20 Business Days of receiving the Economic Test Notice, to enter into the FIT Production Line. If the Applicant does not return a 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 20 Business Days. If the Application was previously in the FIT Production Line, it will remain in the FIT Production Line in accordance with Section 5.5; or

(iv) There are not currently the Distribution System resources necessary to accommodate the connection of the Project, nor are there LDC plans in accordance with the Distribution System Code for the construction of the Distribution System resources necessary to accommodate the connection of the Project. The Application will be placed in, or will remain in, as applicable, the FIT Reserve, to be re-evaluated during the following iteration, in accordance with Section 5.4.

5.5 **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, the OPA will assess whether connection capacity has become available to connect the Project, in accordance with Section 5.4(b).

(b) Upon receipt of a Production Line Confirmation in accordance with Section 5.4(c)(i), 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 at-risk, subject to Sections 5.5(e) and 10.2(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 at-risk, until the entire Application Security has become at-risk 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 at-risk as a result of time spent in the FIT Production Line pursuant to Section 5.5(b), as liquidated damages and not as a penalty, and will return the remaining Application Security to the Applicant within 20 Business Days. If an Applicant fails to replace Application Security that is in the form of a letter of credit within 30 days after the provider of such letter of credit has given notice that it does not wish to extend the letter of credit for an additional term, the Applicant will be deemed to have requested to withdraw their Application from the FIT Production Line, and the OPA shall be entitled to draw the portion of the Application Security that has become at-risk as a result of time spent in the FIT Production Line pursuant to Section 5.5(b), as liquidated damages and not as a penalty.

(d) If circumstances change which would reasonably be expected to affect the preferred Connection Point of a Project for which an Application is in the FIT Production Line, the Applicant in respect of such Application may, by providing written notice

to the OPA, revise any affected aspects of their Application other than the proposed Renewable Fuel, Contract Capacity or Site, to reflect such changes or planned changes in the Distribution System or Transmission System, as applicable, without impacting its Time Stamp.

(e) In the event that an Application in the FIT Production Line has remained in the FIT Production Line or a combination of the FIT Production Line and the FIT Reserve for more than 10 years, then within 30 days after the ten-year anniversary of the later of the Time Stamp and the date of the 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.

5.6 **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 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 20 Business Days of receiving such notice, the OPA will return the full amount of the Application Security to the Applicant.

(b) If circumstances change which would reasonably be expected to affect the preferred Connection Point of a Project for which an Application is in the FIT Reserve, the Applicant in respect of such Application may, by providing written notice to the OPA, revise any affected aspects of their Application other than the proposed Renewable Fuel, Contract Capacity or Site, to reflect such changes or planned changes in the Distribution System or Transmission System, as applicable, without impacting its Time Stamp.

(c) In the event that an Application in the FIT Reserve has remained in the FIT Reserve or a combination of the FIT Reserve and the FIT Production Line for more than 10 years, then within 30 days after the ten-year anniversary of the later of the Time Stamp and the date of the 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. For greater certainty, an Applicant may withdraw an Application from the FIT Reserve at any time pursuant to Section 5.6(a).

5.7 **Other Circumstances**

Where an Applicant has resubmitted an Application in respect of the same Contract Facility that was the subject of a FIT Contract which was terminated pursuant to Sections 2.1(d) or 2.1(e)(i) of the FIT Contract, no more than 30 days after the date of such termination, then

notwithstanding anything in Section 4.1(a) to the contrary, the Time Stamp issued to the original Application that was the subject of the terminated FIT Contract shall be reinstated and issued to the resubmitted Application.

SECTION 6 – FIT CONTRACT FORM AND EXECUTION

6.1 Offer & Acceptance

(a) Following the acceptance of an Application as having met the requirements set out in Section 2 and Section 3, where the OPA has determined that there are available connection resources for a Project or where the Project is otherwise in respect of a Capacity Allocation Exempt Facility, the OPA will provide notice to the Applicant in respect of such Project in which the OPA shall offer a FIT Contract in its most recent standardized form on the basis of the information set out in the Application (the "**Offer Notice**"). The Contract Price shall be established in accordance with Section 7.1(b).

(b) An Applicant will have 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.

(c) Where an Offer Notice is provided in respect of an Application for which the Application Security was provided to the OPA in the form of certified cheque, bank draft or money order, an Applicant that intends to provide Completion and Performance Security in the same form as the Application Security may convert the Application Security into Completion and Performance Security to reduce the amount of Completion and Performance Security outstanding, by enclosing the provided consent form with its response to the Offer Notice.

(d) 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 15 Business Days. If the OPA does not receive the executed FIT Contract and Completion and Performance Security from the Applicant within 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 in the FIT Production Line or the FIT Reserve, and the OPA does not receive the executed FIT Contract and Completion and Performance Security from the Applicant within 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 20 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 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.

6.2 **Form of FIT Contract**

The form of the FIT Contract will be composed of a Project-specific cover page, a set of standard terms and conditions, special terms and conditions (if applicable), a technology-specific exhibit, a settlement exhibit specific to the characteristics of the Project and an appendix of standardized definitions.

6.3 **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 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, commencing on the Commercial Operation Date, to pay for Hourly Delivered Electricity at the Contract Price for a period of 20 years or, in the case of Contract Facilities using waterpower as their Renewable Fuel, for a period of 40 years, in each case subject to earlier termination in accordance with the FIT Contract's terms.

(b) The FIT Contract sets out the metering requirements for the Facility, and where the Facility is a Registered Facility, the Supplier must provide a Metering Plan to the OPA for approval. The Supplier must also 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 must also provide read only access to the Facility's meter and the Host Facility's meter, as applicable.

(c) 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 varies based on certain characteristics of the Contract Facility or the Supplier. When the Contract Facility achieves Commercial Operation, the Completion and Performance Security will be returned in full. If certain conditions set out in the FIT Contract occur, Suppliers may be required to provide Completion and Performance Security to the OPA after achieving Commercial Operation to secure its obligations under the FIT Contract.

(d) The FIT Contract provides that the OPA may terminate the FIT Contract with its liability limited to a prescribed limit of Pre-Construction Development Costs until the Supplier receives Notice to Proceed from the OPA. In order to receive Notice to Proceed, a Supplier must submit an NTP Request to the OPA, along with certain prerequisites demonstrating Project development. Following this request, the OPA will have an opportunity to assess the status of any required Planned In-Service Transmission Developments as well the cost of connecting a Contract Facility that is to be allocated to the Transmitter (as determined by a System Impact Assessment and the Transmission System Code), and can either issue Notice to Proceed, terminate the FIT Contract, or defer its decision in accordance with the terms of the FIT Contract.

(e) The FIT Contract provides that for Applications in respect of Capacity Allocation Exempt Facilities where the applicable LDC seeks direction from the OEB prior to connecting such Capacity Allocation Exempt Facility in accordance with Section

6.2.8B of the Distribution System Code, the Applicant may terminate the FIT Contract with a full return of Completion and Performance Security.

(f) If after the execution of a FIT Contract there are changes to the IESO Market Rules that affect a Supplier's Economics, the FIT Contract provides for negotiation or arbitration to make the necessary amendments to the FIT Contract to restore the Supplier's Economics to their condition prior to the IESO Market Rule amendment.

6.4 **Domestic Content**

(a) The FIT Contract will require that Contract Facilities utilizing windpower with a Contract Capacity greater than 10 kW, or Contract Facilities utilizing solar (PV), achieve a minimum percentage for their Domestic Content Level, which will be set out on the FIT Contract Cover Page (the "**Minimum Required Domestic Content Level**").

(i) For windpower Projects with a Contract Capacity greater than 10 kW, the Minimum Required Domestic Content Level is 25% for FIT Contracts that have a Milestone Date For Commercial Operation prior to January 1, 2012 and 50% for FIT Contracts that have a Milestone Date For Commercial Operation on or after January 1, 2012.

(ii) For solar (PV) Projects with a Contract Capacity greater than 10 kW, the Minimum Required Domestic Content Level is 50% for FIT Contracts that have a Milestone Date for Commercial Operation prior to January 1, 2011 and 60% for FIT Contracts that have a Milestone Date For Commercial Operation on or after January 1, 2011.

(iii) For solar (PV) Projects with a Contract Capacity less than or equal to 10 kW, the Minimum Required Domestic Content Level is 40% for FIT Contracts that have a Milestone Date for Commercial Operation prior to January 1, 2011 and 60% for FIT Contracts that have a Milestone Date For Commercial Operation on or after January 1, 2011.

(b) The Domestic Content Level of a Contract Facility will be calculated in accordance with the methodology set out in Exhibit D to the FIT Contract. If a Contract Facility does not meet the Minimum Required Domestic Content Level, the Supplier will be in default under the FIT Contract.

(c) Applicants in respect of Capacity Allocation Exempt Facilities where the Project utilizes solar (PV) as its Renewable Fuel, may, for purposes of affecting the Minimum Required Domestic Content Level, elect to have a Milestone Date for Commercial Operation of December 31, 2010.

(d) Applicants in respect of Capacity Allocation Exempt Facilities where the Project utilizes wind power as its Renewable Fuel, may, for purposes of affecting the Minimum Required Domestic Content Level, elect to have a Milestone Date for Commercial Operation of December 31, 2011.

(e) Where an Applicant has made the election set out in Section 6.4(c) or 6.4(d), the Applicant will be required to include the special terms and conditions set out in Exhibit D of these FIT Rules as Schedule 2 to their FIT Contract, which includes

liquidated damages of $0.25/kW/day for each calendar day that Commercial Operation is late.

(f) The OPA may from time to time add new "Domestic Content Grids" to Exhibit D of the FIT Contract, which will expand the options for a Supplier to achieve its Minimum Required Domestic Content Level. Any contract offered in accordance with Section 6.1(a) will contain the most up-to-date version of Exhibit D. For greater certainty, (i) the development of new "Domestic Content Grids" and the updating of Exhibit D shall not affect FIT Contracts already executed and (ii) the removal or amendment of any existing "Domestic Content Grids" shall be done in accordance with Section 10.

6.5 Resolving Inconsistencies

Section 6.3 is for descriptive purposes only. For greater certainty, to the extent that there is any inconsistency between Section 6.3 and the FIT Contract, the FIT Contract shall prevail.

SECTION 7 – CONTRACT PRICING

7.1 Price Schedule

(a) The FIT Program establishes long-term pricing for Hourly Delivered Electricity from Projects. The pricing is 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 10.1. 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.

(c) Projects that use Renewable Biomass, Bio-gas, 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 7, 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.

7.2 Price Escalation

For certain Renewable Fuels, the Price Schedule provides for an annual escalation of a specified percentage of the Contract Price on the basis of increases in the CPI. In these instances, 100% of the Contract Price shall be escalated on the basis of cumulative increases in the CPI between the Base Date of the Price Schedule and the Milestone Date for

Commercial Operation, and thereafter, the specified percentage of the Contract Price shall be subject to escalation on the basis of cumulative increases in the CPI. This annual escalation, where applicable, will be calculated in accordance with Exhibit B of the FIT Contract and the OPA shall establish adjusted prices applicable for each calendar year regardless of the Contract Date. For greater certainty, the application of the Contract Price escalation provisions shall not result in a Contract Price in any year that is less than the Contract Price applicable in the previous year.

7.3 **Other Factors**

(a) For the purpose of determining the Contract Price in accordance with Section 7.1 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 Environmental Attributes 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 Environmental Attributes are needed and consumed for the generation of Hourly Delivered Electricity. The FIT Contract also provides that eighty percent (80%) of the profit generated by any Future Contract Related Products are to the OPA's account.

(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, circumventing the eligibility requirements set out in Section 2.1, or obtaining 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 the same Person or Applicant Related Persons, the relative Locations of such Projects and the Renewable Fuel(s) used by such Projects.

SECTION 8 – OVERVIEW OF SETTLEMENT

8.1 **Settlement for IESO Market Participants**

(a) In the case of a Facility that:

(i) is directly connected to the IESO-Controlled Grid;

(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 greater of the Hourly Ontario Energy Price and zero 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.

8.2 **Settlement for Non-IESO Market Participants**

(a) In the case of a 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 monthly, quarterly or other periodic billing cycle.

(b) In the case of a Facility with a Contract Capacity greater than 5 MW, that is not a Registered Facility or a Behind-the-Meter Facility, the payments to the Supplier under the FIT Contract will be adjusted by subtracting the absolute value of the Hourly Ontario Energy Price for all hours where the Hourly Ontario Energy Price is less than zero, in respect of all Hourly Delivered Electricity.

(c) For a 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 settlement account with the applicable LDC in accordance with the Retail Settlement Code.

(d) Where a 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, 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, unless such Embedded Retail Generator's settlement has already been adjusted to account for the Facility's Hourly Delivered Electricity.

8.3 **Incremental Projects and Planned Generating Facilities**

Where a Project is a Planned Generating Facility with respect to one or more Incremental Projects, the Hourly Delivered Electricity for such Planned Generating Facility will be adjusted by deducting the amount of Hourly Delivered Electricity attributed to the Incremental Project(s) in accordance with the applicable Incremental Project Ratio(s).

8.4 **Alternate Settlement Arrangements**

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.

SECTION 9 – ABORIGINAL AND COMMUNITY PROJECTS

9.1 Applicable Definitions

(a) ***Aboriginal Community*** means, for the purposes of the FIT Program,

(i) a First Nation that is a "Band" as defined in the *Indian Act* (Canada);

(ii) the Métis Nation of Ontario or any of its active Chartered Community Councils;

(iii) a Person, other than a natural person, that is determined by the Government of Ontario for the purposes of the FIT Program to represent the collective interests of a community that is composed of Métis or other aboriginal individuals; or

(iv) a corporation that is wholly-owned by one or more Aboriginal Communities as described in (i), (ii) or (iii).

(b) ***Aboriginal Participation Level*** means, in relation to a Project or a Contract Facility, the percentage of the Economic Interest in the Applicant or the Supplier that is held by an Aboriginal Community.

(c) ***Aboriginal Participation Project*** means a Project for which the Aboriginal Participation Level is greater than or equal to 10%.

(d) ***Aboriginal Price Adder*** means the amount in ¢/kWh paid to Aboriginal Participation Projects and is calculated as the Maximum Aboriginal Price Adder multiplied by the Aboriginal Participation Level multiplied by two, but such amount shall not in any case exceed the Maximum Aboriginal Price Adder.

(e) ***Community Investment Members*** means,

(i) one or more individuals Resident in Ontario;

(ii) a Registered Charity with its head office in Ontario;

(iii) a Not-For-Profit Organization with its head office in Ontario; or

(iv) a "co-operative corporation", as defined in the *Co-operative Corporations Act* (Ontario), all of whose members are Resident in Ontario.

(f) ***Community Participation Level*** means, in relation to a Project or a Contract Facility, the percentage of the Economic Interest of the Applicant or the Supplier that is held by Community Investment Members, provided that the Economic Interest held by any Person (and all those who hold an Economic Interest in such Person) (i) whose primary business or employment is the development of non-community-based electricity generation projects, as determined by the OPA in consultation with the third-party administrator of the "Community Energy Partnership Program" or (ii) that has issued its own securities to the public or is an

Affiliate of a Person that has issued securities to the public, shall not count towards the Community Participation Level.

(g) ***Community Participation Project*** means either (i) a Project in respect of which the Applicant or the Supplier is a Community Investment Member or (ii) where the Applicant or Supplier is not itself a Community Investment Member, a Project that has a Community Participation Level greater than or equal to 10%.

(h) ***Community Price Adder*** means the amount in ¢/kWh paid to Community Participation Projects and is calculated as the Maximum Community Price Adder multiplied by the Community Participation Level multiplied by two, but such amount shall not in any case exceed the Maximum Community Price Adder.

(i) ***Economic Interest*** means, with respect to any Person other than an individual, the right to receive or the opportunity to participate in any payments arising out of or return from, and an exposure to a loss or a risk of loss by, the business activities of such Person.

(j) ***Maximum Aboriginal Price Adder*** means the maximum amount in ¢/kWh set out in the Price Schedule for each applicable Renewable Fuel that is eligible to be added to the Contract Price in respect of an Aboriginal Participation Project, in accordance with these FIT Rules.

(k) ***Maximum Community Price Adder*** means the maximum amount in ¢/kWh set out in the Price Schedule for each applicable Renewable Fuel that is eligible to be added to the Contract Price in respect of a Community Participation Project, in accordance with these FIT Rules.

9.2 **Provisions for Aboriginal Participation Projects**

(a) Notwithstanding Section 3.1(b), where an Application is in respect of an Aboriginal Participation Project, the Aboriginal Participation Level of such Project as of the date of the Application is greater than or equal to 50%, and the Applicant has provided an Aboriginal Participation Project Declaration as evidence of this, the amount of the Application Security shall be $5.00 per kW of Contract Capacity, regardless of Renewable Fuel.

(b) The price incorporated into a FIT Contract in respect of an Aboriginal Participation Project will be the price as determined in accordance with Section 7.1(b), plus the Aboriginal Price Adder as determined at the time of the Offer Notice. In the event that the Aboriginal Participation Level changes following the Contract Date, the Aboriginal Price Adder will be adjusted in accordance with the FIT Contract for any future Contract Payments.

(c) An Applicant in respect of an Aboriginal Participation Project shall, within 20 Business Days of a request by the OPA, provide written evidence documenting the Aboriginal Participation Level to the satisfaction of the OPA, acting reasonably.

(d) An Applicant shall not be permitted to decrease the Aboriginal Participation Level in respect of its Project without the prior written consent of the OPA, which consent may not be unreasonably withheld. Where an Application in respect of an Aboriginal Participation Project has obtained the benefit of reduced Application Security pursuant to Section 9.2(a), such Applicant shall be required to increase the

level of Application Security to that set out in Section 3.1(b) prior to the OPA consenting to a reduction in the Aboriginal Participation Level from greater than or equal to 50% to below 50%. For greater certainty, where the Aboriginal Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Application Security.

9.3 **Provisions for Community Participation Projects**

(a) Notwithstanding Section 3.1(b), where an Application is in respect of a Community Participation Project, the Community Participation Level of such Project as of the date of the Application is greater than or equal to 50%, and the Applicant has provided a Community Participation Project Declaration as evidence of this, the amount of the Application Security shall be $5.00 per kW of Contract Capacity, regardless of Renewable Fuel.

(b) The price incorporated into a FIT Contract in respect of a Community Participation Project will be the price as determined in accordance with Section 7.1(b), plus the Community Price Adder as determined at the time of the Offer Notice. In the event that the Community Participation Level changes following the Contract Date, the Community Price Adder will be adjusted in accordance with the FIT Contract for any future Contract Payments.

(c) An Applicant in respect of a Community Participation Project shall, within 20 Business Days of a request by the OPA, provide written evidence documenting the Community Participation Level to the satisfaction of the OPA, acting reasonably.

(d) An Applicant shall not be permitted to decrease the Community Participation Level in respect of its Project without the prior written consent of the OPA, which consent may not be unreasonably withheld. Where an Application in respect of a Community Participation Project has obtained the benefit of reduced Application Security pursuant to Section 9.3(a), such Applicant shall be required to increase the level of Application Security to that set out in Section 3.1(b) prior to the OPA consenting to a reduction in the Community Participation Level from greater than or equal to 50% to below 50%. For greater certainty, where the Community Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Application Security.

9.4 **Combined Aboriginal Participation Projects and Community Participation Projects**

(a) The Economic Interest of any Person shall only qualify towards either the Aboriginal Participation Level or the Community Participation Level.

(b) Where a Project is both an Aboriginal Participation Project and a Community Participation Project, both the Aboriginal Price Adder and the Community Price Adder shall apply, provided that the total shall be subject to a maximum of the greater of the Maximum Aboriginal Price Adder and the Maximum Community Price Adder (such maximum, the "**Maximum Price Adder**").

(c) Notwithstanding Section 3.1(b), where an Application is in respect of an Aboriginal Participation Project that is also a Community Participation Project and the total of the Aboriginal Participation Level and the Community Participation Level of such Project as of the date of the Application is greater than or equal to 50%, the amount

of the Application Security shall be $5.00 per kW of Contract Capacity, regardless of Renewable Fuel.

(d) Where an Application in respect of a Project that is both an Aboriginal Participation and a Community Participation Project has obtained the benefit of reduced Application Security pursuant to Section 9.4(c), such Applicant shall be required to increase the level of Application Security to that set out in Section 3.1(b) prior to the OPA consenting to a reduction in the total of the Aboriginal Participation Level and Community Participation Level from greater than or equal to 50% to below 50%. For greater certainty, where the total of the Aboriginal Participation Level and the Community Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Application Security.

SECTION 10 – PROGRAM REVIEW AND AMENDMENTS

10.1 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 two years after the 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 30 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.

10.2 Significant Program Amendments

(a) Where an Amendment is made, the OPA 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, Site or other factors. Any such determination will be posted on the Website and sent by e-mail 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 10.1 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 10.2(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 30 days of notice of a Significant Program Amendment being posted on the Website, an Applicant for whom such Significant Program Amendment applies may:

(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 20 Business Days. For greater certainty, this includes any portion of the Application Security that may have previously been at-risk.

(d) Where an Amendment is made that the OPA has not determined to be a Significant Program Amendment in accordance with Section 10.2(a) in relation to an Applicant, such Applicant may request in writing within 20 Business Days of such Amendment being posted on the Website to withdraw from the FIT Program with a full return of Application Security. 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 with its reasons for such denial, (iii) request further information that it reasonably requires of such Applicant, or (iv) take such other action as it sees fit.

(e) Where either the Legislative Assembly of Ontario takes any action which would be considered a Discriminatory Action in relation to an Applicant if such Applicant held a FIT Contract for its Project, or any IESO Market Rule amendment is implemented that would, if such Applicant held a FIT Contract for its Project, materially affect the Supplier's Economics with respect to such Project, then such Applicant may request in writing within 30 days of public notice of such action by the Legislative Assembly or amendment of the IESO Market Rules, as applicable, to withdraw from the FIT Program with a full return of Application Security. Such request must demonstrate to the satisfaction of the OPA, acting reasonably, that the action by the Legislative Assembly or IESO Market Rule amendment (as applicable) 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 with its reasons for such denial, (iii) request further information that it reasonably requires of such Applicant, or (iv) take such other action as it sees fit.

SECTION 11 – 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 of its obligations 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.

(c) Information provided by an Applicant in relation to a Project, including technology, capacity, location, date, status within the FIT Program and name of Applicant may be disclosed by the OPA on the Website or otherwise, and such disclosure may be made on an individual basis, or on aggregated with information provided by other Applicants.

(d) 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, the Government of Ontario, including the Renewable Energy Facilitation Office, and other advisers retained for the purpose administration of the FIT Program.

SECTION 12 – ADDITIONAL RULES

12.1 Assignment and Change of Control

(a) Subject to Section 12.1(d), an Applicant shall not assign its Application to another Person other than an Applicant Related Person, except with the prior written consent of the OPA, which consent may not be unreasonably withheld.

(b) Subject to Section 12.1(d), an Applicant shall not permit or allow a change of Control of such Applicant, except with the prior written consent of the OPA, which consent may not be unreasonably withheld.

(c) For the purposes of Sections 12.1(a) and 12.1(b), it shall not be unreasonable for the OPA to withhold its consent if the proposed assignment or change of Control would cause an Application in respect of an Incremental Project to violate Section 2.2(a).

(d) An Applicant shall not be permitted to assign an Application or permit or allow a change of Control of the Applicant until one year following the submission of the Application, and may not assign its Application or permit or allow a change of Control of the Applicant once the OPA has provided an Offer Notice in respect of such Application.

(e) If an Applicant violates any provision of this Section 12.1, the OPA shall be entitled to reject the Application and draw on the full amount of the Application Security as liquidated damages and not as a penalty.

12.2 **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 (as 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 is suspended, revoked or revised. Under no circumstances whatsoever shall the OPA be liable for any indirect, punitive or consequential damages associated with the Applicant's participation in the FIT Program.

(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.

12.3 **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 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.

12.4 **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) **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 Ontario rate-payers 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 Ontario rate-payers 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, and does not constitute a penalty.

(g) **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.

(h) **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.

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

(j) **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.

(k) **Time.** Time is of the essence in the performance of the Parties' respective obligations.

(l) **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 13 – PROGRAM LAUNCH

13.1 Applicable Definitions

Capitalized terms used in this Section 13 of the FIT Rules but not defined in Appendix 1 – Standard Definitions have the meanings given to them below:

(a) ***Access Rights Date*** has the meaning given to it in Section 13.4(b)(ii).

(b) ***Applicant Control Group*** has the meaning given to it in Section 13.4(a)(ii).

(c) ***COD Acceleration Days*** has the meaning given to it in Section 13.4(b)(i).

(d) ***Criteria Score*** means the total number of points awarded to a Project in accordance with Section 13.4(a).

(e) ***Designated Equity Provider*** has the meaning given to it in Section 13.4(a)(iv).

(f) ***GAAP*** means Canadian or U.S. generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants or the Financial Accounting Standards Board, as applicable, or any successor institutes, applied on a consistent basis.

(g) ***IFRS*** means the International Financial Reporting Standards, being the accounting standards and interpretations adopted or recommended from time to time by the International Accounting Standards Board (IASB) or any successor organization, applied on a consistent basis.

(h) ***Launch Application*** has the meaning given to it in Section 13.2(a).

(i) ***Major Equipment Component*** means, (i) with respect to a wind power Project, the tower, the gearbox or the wind turbine blades; (ii) with respect to a solar (PV) Project, the photovoltaic module (i.e. panel) or the inverter; and (iii) with respect to

all other Projects, any single component of the Generating Equipment the cost of which is reasonably estimated to be more than 10% of the total cost of the Project.

(j) ***Nameplate Capacity*** means the rated, continuous load-carrying capability net of parasitic or station service loads, expressed in kW, of a generating facility to generate and deliver electricity at a given time.

(k) ***REA-Exempt Project*** means a Project in respect of a Facility that is exempt from the requirement to have a Renewable Energy Approval, which, for greater certainty, includes Facilities that are exempt from such requirement by reason only that they have those permits and approvals necessary to exempt it from the Renewable Energy Approval.

(l) ***Similar Facility*** means an electricity generation facility, other than the Project, that is located anywhere in the world, which (i) uses the same Renewable Fuel as the Project, and (ii) has a Nameplate Capacity of at least 25% of the proposed Contract Capacity of the Project.

(m) ***Tangible Net Worth*** means in respect of a Designated Equity Provider, at any time and without duplication, an amount determined in accordance with GAAP (or IFRS, if the Designated Equity Provider has adopted such standard), and calculated as (a) the aggregate book value of all assets, minus (b) the aggregate book value of all liabilities, minus (c) the sum of any amounts shown on account of patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

13.2 **Application Requirements**

(a) Notwithstanding anything to the contrary in Section 4.1(a) or otherwise in these FIT Rules, all Applications (other than those in respect of Capacity Allocation Exempt Facilities) that meet all of the Project and Application eligibility requirements set out in Section 2 and Section 3 and are submitted to the OPA within 60 days following Program Launch (the "**Launch Applications**") shall be assigned a Time Stamp in accordance with the procedure set out in Section 13.5. For greater certainty, Applications in respect of Capacity Allocation Exempt Facilities will be offered FIT Contracts in accordance with Section 6.1(a).

(b) Any Application submitted to the OPA within 60 days following Program Launch that does 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.

(c) An Applicant may, notwithstanding Section 2.1(a)(vii), submit a Launch Application in respect of a generating facility that is the subject of a Standard Offer Contract which has not achieved *commercial operation* (as defined in the applicable Standard Offer Contract). Any such Applicant will be required to execute an agreement in the Prescribed Form whereby the Applicant will repudiate and terminate such Standard Offer Contract, and any Impact Assessments and Connection Cost Agreements associated with the facility that is the subject of such Standard Offer Contract. Other then the eligibility requirement set out in Section 2.1(a)(vii), all other requirements of these FIT Rules shall apply to such Launch Applications.

13.3 **Advanced RESOP FIT Amendment Option**

(a) Notwithstanding any other provisions of these FIT Rules, a party to a Standard Offer Contract in respect of a generating facility under development and for which a Certificate of Approval (Noise Emissions) has been issued by the Ontario Ministry of the Environment (an "**Advanced RESOP Party**") will be eligible to request, no later than 30 days after Program Launch, an amendment to such Standard Offer Contract as set out in this Section 13.3 (the "**Advanced RESOP FIT Amendment**"). In order to receive the Advanced RESOP FIT Amendment, an Advanced RESOP Party must submit a written request in the Prescribed Form together with supplementary documentation confirming its status as an Advanced RESOP Party, as well as providing financial security in the amount of $20 per kW of *contract capacity* (as defined under the applicable Standard Offer Contract) in the form of 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, substantially in the Prescribed Form. The OPA will provide Advanced RESOP Parties that deliver all such requirements an Advanced RESOP FIT Amendment that has been executed by the OPA no later than 40 days following Program Launch. The Advanced RESOP Party will be required to countersign and return the Advanced RESOP FIT Amendment within 14 days of receiving it.

(b) The Advanced RESOP FIT Amendment will include:

(i) a substitution of the *contract price* (as defined under the applicable Standard Offer Contract), replacing item 10 of the Standard Offer Contract with "12.1¢/kWh comprised of: a fixed portion of 9.68 ¢/kWh and an indexed portion of 2.42 ¢/kWh";

(ii) relief from the requirement under the Standard Offer Contract to share with the OPA payments it may be able to obtain under the ecoENERGY for Renewable Power Program;

(iii) a requirement to maintain the completion and performance security provided pursuant to Section 13.3(a), which will be returned to the Advanced RESOP Party upon the achievement of *commercial operation* (as defined under the Standard Offer Contract); and

(iv) a requirement that the facility achieve *commercial operation* no later than December 31, 2010, with liquidated damages payable for each day *commercial operation* is late, culminating in an event of default if *commercial operation* is not achieved by December 31, 2011.

13.4 **Criteria**

(a) Where, in respect of a Launch Application, the Applicant or the Project satisfies any of the criteria set out below, the Applicant may include, along with the other materials required pursuant to Section 3.1, evidence demonstrating that it satisfies such criteria:

(i) the Project is an REA-Exempt Project;

(ii) the Applicant, any Person that Controls the Applicant, or any Person that is Controlled by the Applicant (the "**Applicant Control Group**"), either owns or has executed a fixed or guaranteed maximum price contract with an equipment supplier, including an engineering-procurement-construction (EPC) contractor or equipment manufacturer, to supply a Major Equipment Component. In the case of solar (PV) and windpower Projects, such Major Equipment Component must have undergone, or will have undergone prior to delivery to the Applicant Control Group, any one of the Designated Activities set out in the applicable Domestic Content Grid in Exhibit D to the FIT Contract. For the purposes of this subsection, ownership of the Major Equipment Component means that (A) the Applicant Control Group has taken delivery of the Major Equipment Component from the equipment supplier, and (B) registered and beneficial title to the Major Equipment Component has passed from the equipment supplier;

(iii) the Applicant Control Group has, or any three full-time employees of the Applicant Control Group each have, successful experience with planning and developing one or more Similar Facilities. The Similar Facility(ies) used to support this requirement must have been developed under circumstances where the Applicant Control Group had, or the three full-time employees each had, as applicable, primary responsibility for such Similar Facility(ies), either for planning and development or as design/builder; and

(iv) that any one Person that accounts for 15% or more of the direct or indirect Economic Interest in the Applicant, or if applicable, any one group of Persons that together account for 15% or more of the Economic Interest in the Applicant (the "**Designated Equity Provider(s)**"), has an individual Tangible Net Worth (or a collective Tangible Net Worth, in the case of a group of Designated Equity Providers), of $500 or more per kW of proposed Contract Capacity at the end of the most recent fiscal year.

(A) **Financial Documentation.** The Applicant must attach an audited balance sheet for the Designated Equity Provider(s), in conformity with GAAP (or IFRS if the Designated Equity Provider has adopted such standard), with respect to the most recent fiscal year, provided that where the most recent fiscal year has ended less than 90 days prior to the Program Launch, the Applicant may submit such financial statements in respect of the previous fiscal year. Notwithstanding the foregoing, a Designated Equity Provider who is an individual shall be permitted to provide an unaudited balance sheet or other financial documentation satisfactory to the OPA, acting reasonably, demonstrating Tangible Net Worth, instead of an audited balance sheet, together with a statutory declaration of such person stating that such unaudited balance sheet or other financial documentation presents fairly, in all material respects, the Tangible Net Worth of the Designated Equity Provider. All Designated Equity Provider(s) other than individuals, that do not provide audited balance sheets, do not satisfy the requirements of this Section 13.4(a)(iv)(A).

(B) **Calculation.** The Applicant must attach a summary outlining and describing the calculation used to determine the Tangible Net

Worth of Designated Equity Provider(s) pursuant to Section 13.4(a)(iv).

For each criteria set out in Section 13.4(a), where the Applicant has provided evidence satisfactory to the OPA, acting reasonably, that the Project satisfies such criteria, the Launch Application will be awarded one point, for a maximum possible Criteria Score of four points.

(b) All Applicants submitting a Launch Application shall include, along with the other materials required pursuant to Section 3.1 and any evidence provided pursuant to Section 13.4(a),

(i) a number of days by which the Applicant is willing to reduce the time between the Contract Date and the Milestone Date for Commercial Operation from that which it would otherwise be under the FIT Contract ("**COD Acceleration Days**"). The COD Acceleration Days shall be subject to (A) a minimum of zero days, and (B) a maximum of 365 calendar days plus 90 calendar days for each point awarded to the Project pursuant to Section 13.4(a); and

(ii) evidence of the date that (A) Access Rights were first acquired by the Applicant Control Group, or (B) rights to the Site were first acquired by the Applicant Control Group, where such rights would have qualified as Access Rights had the FIT Program been in place at the time, (the "**Access Rights Date**"). For greater certainty, such evidence may be the same documentation provided to satisfy the requirements of Section 3.1(e), or may include additional documentation where necessary.

13.5 **Time Stamp Assignment**

(a) All Launch Applications will be assigned a Time Stamp in relative priority to one another such that Launch Applications with more COD Acceleration Days shall be assigned earlier Time Stamps than those Launch Applications with fewer COD Acceleration Days. The Time Stamps assigned to all Launch Applications shall be earlier in time than the Time Stamps assigned to Applications received following the deadline for consideration in the first Transmission Availability Test.

(b) Where two or more Launch Applications propose the same number of COD Acceleration Days, those Launch Applications will be assigned a Time Stamp in relative priority to one another such that Launch Applications with a greater Criteria Score shall be assigned an earlier Time Stamp than those Launch Applications with a lower Criteria Score.

(c) Where two or more Launch Applications propose the same number of COD Acceleration Days and have the same Criteria Score, those Launch Applications will be assigned a Time Stamp in relative priority to one another such that Launch Applications with an earlier Access Rights Date shall be assigned an earlier Time Stamp than those Launch Applications with a later Access Rights Date.

(d) In the event that two or more Launch Applications propose the same number of COD Acceleration Days, have the same Criteria Score and have the same Access Rights Date, their Time Stamps will be assigned in relative priority to one another by random draw.

13.6 **MNR Site Release Projects**

(a) Applicants that submit Launch Applications in respect of Projects whose Access Rights are a result of a completed application to the Ministry of Natural Resources (Ontario) for selection as an "Applicant of Record" in respect of all lands comprising the Site, pursuant to such ministry's applicable *Site Release and Development Review* policies and procedures ("**MNR Site Release Projects**") may be informed following the submission of such Launch Applications that the Applicant does not have priority to obtain "Applicant of Record" status with respect to some or all of the lands comprising the Site.

(b) Where an Applicant in respect of an MNR Site Release Project is determined by the Ministry of Natural Resources not to have priority to obtain "Applicant of Record" status with respect to some or all of the lands comprising the Site, the OPA will inform the Applicant by notice. The Applicant may then withdraw the Application by providing notice to the OPA no later than 10 Business Days following its receipt of notice from the OPA. In such circumstances, the OPA will withdraw the Application and return the Application Security to the Applicant within 10 Business Days of receiving such request.

(c) Where a Launch Application in respect of an MNR Site Release Project has been withdrawn in accordance with Section 13.6(b), the Applicant may re-submit an Application for which the Site is comprised of those lands for which it has priority to obtain "Applicant of Record" status, and which were previously part, but not all, of the lands comprising the Site set out in the original MNR Site Release Project (such revised Project, a "**Revised MNR Site Release Project**"). Where an Application in respect of a Revised MNR Site Release Project is submitted within 30 days after the return of the Application Security in respect of the associated withdrawn MNR Site Release Project, the Application in respect of such Revised MNR Site Release Project will be assigned the Time Stamp originally assigned to the Application in respect of the withdrawn MNR Site Release Project.

13.7 **Enhanced Transition Options**

Projects that are 500 kW or smaller, for which the generating equipment was purchased or was in service by 11:59 p.m. on October 1, 2009, are eligible to transition to the FIT Program and will be deemed to have met the domestic content requirements, so long as a request is made in the Prescribed Form by November 30, 2009. Applicants in respect of Projects that have not achieved commercial operation will be required to provide evidence that the generating equipment was purchased by October 1, 2009. Further detail regarding these transition options is available on the Website at: http://fit.powerauthority.on.ca/Storage/98/10768_FIT_Transition_Options_FINAL.pdf.

13.8 **Applicable Policies**

(a) All Launch Applications specifying a number of COD Acceleration Days greater than zero that are offered a FIT Contract without being subjected to the Economic Connection Test will be required to include the special terms and conditions set out in Exhibit C of these FIT Rules as part of their FIT Contract. All Launch Applications that are not offered a FIT Contract until after being subjected to the Economic Connection Test will not be required to include special terms and conditions as part of their FIT Contract, but will preserve the Time Stamp issued in accordance with Section 13.5.

(b) The Minimum Required Domestic Content Level for Launch Applications that specify COD Acceleration Days and are offered FIT Contracts that are subject to the special terms and conditions set out in Exhibit C, shall be determined as though the FIT Contract was issued on December 24, 2009. For greater certainty, the Milestone Date for Commercial Operation shall be determined using the actual date the FIT Contract is issued.

Examples:

(i) A wind power Project greater than 10 kW submitting 359 COD Acceleration Days that has its FIT Contract issued on December 28, 2009 – The Project would have its Minimum Required Domestic Content Level set as though the contract was issued on December 24, 2009, and as though the Milestone Date for Commercial Operation was accordingly December 31, 2011. This date is calculated as December 24, 2009, plus three years (December 24, 2012), less 359 COD Acceleration Days. As such, the Minimum Required Domestic Content Level would be 25%. The actual Milestone Date for Commercial Operation would be January 4, 2012, calculated as the date the FIT Contract is issued (December 28, 2009), plus three years, less 359 COD Acceleration Days.

(ii) A solar (PV) Project greater than 10 kW submitting 724 COD Acceleration Days that has its FIT Contract issued on December 28, 2009 – The Project would have its Minimum Required Domestic Content Level set as though the contract was issued on December 24, 2009, and as though the Milestone Date for Commercial Operation was accordingly December 31, 2010. This date is calculated as December 24, 2009, plus three years (December 24, 2012), less 724 COD Acceleration Days. As such, the Minimum Required Domestic Content Level would be 50%. The actual Milestone Date for Commercial Operation would be January 4, 2011, calculated as the date the FIT Contract is issued (December 28, 2009), plus three years, less 724 COD Acceleration Days.

(c) Applicants are strongly cautioned against submitting Launch Applications for Projects that they are not prepared to develop, if offered a FIT Contract. Despite Section 6.1(d)(i), and given the damage that a failure to execute a FIT Contract offered in respect of a Launch Application would cause the FIT Program, where Applicants receive an Offer Notice in respect of a Launch Application but the OPA does not receive the executed FIT Contract and Completion and Performance Security from such Applicant within 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.

(d) The OPA is anticipating a large number of Launch Applications. In order to ensure that each Application receives full and proper consideration, it may not be possible for the OPA to achieve its target response times.

EXHIBIT A – APPLICATION SECURITY (LETTER OF CREDIT FORM)

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Ontario Power Authority and its permitted assigns ("**Beneficiary**")
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 *Bank Act*]**
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the "**Credit**")

The Credit is issued in connection with the Feed-In Tariff Rules issued by the Ontario Power Authority dated ●, as amended (the "**FIT Rules**") and the Application dated **[Insert Date of Application]** submitted by **[insert name of FIT Program 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, as such term is defined in the FIT Rules, whose Application has been accepted by the Beneficiary, **[has failed to deliver the Completion and Performance Security within 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 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,][has violated the FIT Rules]** or **[has withdrawn their Application from the FIT Production Line]** 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 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 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.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit as provided for above, 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 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**]. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the [**new Beneficiary**], care of the Applicant."

[**Issuing Bank Name**]

By: _____

By: _____

EXHIBIT B – FORM OF PRODUCTION LINE CONFIRMATION

[Name]
[Address]
[E-mail]

[Date]

Dear **[Applicant]**:

FIT Production Line Confirmation with respect to Application #● (the "Application")

Further to the attached Economic Test Notice, your Project is eligible to enter the FIT Production Line if you sign and return this "**Production Line Confirmation**" to the OPA within 20 Business Days after the date first set out above. For convenience, capitalized terms used but not defined in this Production Line Confirmation have the meaning given to them in the Feed-in Tariff Program Rules in effect on the date that the Application was submitted to the Ontario Power Authority (the "**FIT Rules**").

While your Project is in the FIT Production Line, it will be an input into planning processes relating to the development of transmission and distribution assets, and will be submitted to the Economic Connection Test each time it is run for the region of the Province where your Project is located. Presently, it is run every six months for each region. Following the Economic Connection Test, if there are sufficient connection resources to accommodate the connection of your Project, the OPA will provide an Offer Notice in accordance with the FIT Rules. If there are not sufficient connection resources to accommodate the connection of your Project, you will receive an Economic Test Notice indicating one of the possible outcomes set out in Section 5.4(c) of the FIT Rules.

By signing and returning this Production Line Confirmation, you acknowledge and agree that the OPA will retain your Application Security while your Project is in the FIT Production Line, and that increasing amounts of the Application Security will become "at-risk" and may only be returned to you in accordance with circumstances set out in the FIT Rules. While your Project is in the FIT Production Line you must, at your sole expense, ensure that the Application Security is current, valid, enforceable and in an acceptable form, including promptly providing replacement security for any letter of credit (A) the provider of which has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider of the letter of credit, or (D) the validity of which is challenged by the provider of the letter of credit.

Your Application will retain the Time Stamp issued to it when it was submitted, and this will be used by the OPA to prioritize the future offer of any FIT Contracts on the basis of newly available connection resources.

If after signing and returning this Production Line Confirmation you withdraw your Project from the FIT Production Line, fail to properly execute a FIT Contract that is offered to you, or fail to renew your Application Security, if applicable, you will forfeit some or all of your Application Security as liquidated damages unless a particular exception set out in the FIT Rules otherwise applies. It is solely your responsibility to ensure that your Application continues to satisfy the eligibility requirements set out in the FIT Rules and that your Project remains viable.

If you do not sign and return this Production Line Confirmation to the OPA within 20 Business Days after the date first set out above, your Application Security will be returned to you, your Project will be

removed from the FIT Program and your Time Stamp will be forfeited. You may reapply to the FIT Program at any time subject to the FIT Rules in effect at such time by submitting a new Application along with the Application Fee and Application Security required at that time.

Any controversy or dispute arising out of or relating to this Production Line Confirmation, including its validity, existence, breach, termination, construction or application, or the rights, duties or obligations of any Party, shall be referred to and determined by arbitration before a single arbitrator in accordance with the *Arbitration Act, 1991* (Ontario).

The rules of interpretation set out in Section 12.4 of the FIT Rules shall apply to this Production Line Confirmation (with the necessary conforming changes being made for those rules to apply to this Production Line Confirmation), along with the following additional rules of interpretation:

(i) No amendment, supplement, modification, waiver or termination of this Production Line Confirmation and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound; and

(ii) To the extent that there is any inconsistency between this Production Line Confirmation and the FIT Rules, the FIT Rules shall prevail, but only to the extent of such inconsistency.

Thank you for your participation in the FIT Program. If you have any questions about this Production Line Confirmation or the FIT Program generally, please visit the FIT Program Website at fit.powerauthority.on.ca.

Yours very truly,

Signed,

●

Accepted and agreed to, this ___ day of _____, 20__.

[APPLICANT]

By: _____

Name:

Title:

By: _____

Name:

Title:

EXHIBIT C – FORM OF SPECIAL TERMS AND CONDITIONS
(LAUNCH APPLICATIONS)

Version 1.2A

SECTION 1 – SPECIAL CONDITIONS

1.1 Special Provisions

(a) Section 1.2(a) of Exhibit A to the Agreement is deleted and replaced with the following "The Milestone Date for Commercial Operation is the date that is ● days following the Contract Date." ***[Note to Finalization: This bullet to be filled in with the number of days that the Milestone Date for Commercial Operation would have followed the Contract Date had no COD Acceleration Days been proposed, less the number of COD Acceleration Days.]***

(b) Section 1.2(b) of Exhibit A to the Agreement is deleted and replaced with the following "The NTP Response Date is the date that is ● days following the Contract Date." ***[Note to Finalization: This bullet to be filled in with the number of days that the NTP Response Date would normally follow the Contract Date, less the number of COD Acceleration Days, provided that where the result is less than zero, the number of days shall be zero.]***

(c) At the end of Section 10.1(g), the following sentence is added: "For greater certainty, the reference in this Section to the original Milestone Date for Commercial Operations means the Milestone Date for Commercial Operation as amended by the Special Terms and Conditions."

(d) The period at the end of Section 2.6(a)(v) is replaced with "; and", and a new Section 2.6(a)(vi) is inserted as follows, "the Supplier has paid all liquidated damages due to the OPA (if any), pursuant to Section 2.5(a) of this Agreement."

(e) The letter "(a)" is inserted before the only paragraph in Section 9.5, and the following Section 9.5(b) is added: "Subject to Section 9.2(d)(i), if the OPA terminates this Agreement as a result of the Supplier Event of Default set out in Section 9.1(j), the Supplier shall not be liable to pay the OPA any liquidated damages pursuant to Section 2.5(a) and any liquidated damages so paid shall be returned by the OPA to the Supplier within 20 Business Days of a written request to do so, provided that all Completion and Performance Security the Supplier is required to provide to the OPA pursuant to Section 5.1 has been so provided."

1.2 Milestone Date for Commercial Operation

Section 2.5 is deleted and replaced with the following:

(a) The Supplier acknowledges that time is of the essence to the OPA with respect to attaining Commercial Operation of the Contract Facility by the Milestone Date for Commercial Operation. The Parties agree that Commercial Operation shall be achieved in a timely manner and by the Milestone Date for Commercial Operation, failing which the Supplier shall pay to the OPA within 10 Business Days after receipt of an invoice from the OPA and upon the submission of the

certificate referred to in Section 2.6(a)(v), as liquidated damages and not as a penalty, a sum of money equal to 0.25 Dollars per kW multiplied by the Contract Capacity for each calendar day after the Milestone Date for Commercial Operation until Commercial Operation is achieved.

(b) The maximum time period that liquidated damages shall be calculated and payable under Section 2.5(a) by the Supplier for failure to meet the Milestone Date for Commercial Operation shall be ● days. ***[Note to Finalization: This bullet to be filled in with the number of proposed COD Acceleration Days.]***

(c) The Supplier acknowledges that even if the Contract Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire on the day before the twentieth or fortieth (as applicable) anniversary date of the Milestone Date for Commercial Operation, pursuant to Section 8.1.

EXHIBIT D – FORM OF SPECIAL TERMS AND CONDITIONS
(CAPACITY ALLOCATION EXEMPT FACILITIES WITH AN ACCELERATED MILESTONE DATE FOR COMMERCIAL OPERATION)

Version 1.2B

SECTION 1 – SPECIAL CONDITIONS

1.1 Special Provisions

(a) Section 1.2(a) of Exhibit A to the Agreement is deleted and replaced with the following "The Milestone Date for Commercial Operation is ●." ***[Note to Finalization: This bullet to be filled in with December 31, 2010 for solar (PV) Projects or December 31, 2011 for wind power Projects.]***

(b) Section 1.2(b) of Exhibit A to the Agreement is deleted and replaced with the following "The NTP Response Date is the date that is **0** days following the Contract Date."

(c) At the end of Section 10.1(g), the following sentence is added: "For greater certainty, the reference in this Section to the original Milestone Date for Commercial Operations means the Milestone Date for Commercial Operation as amended by the Special Terms and Conditions."

(d) The period at the end of Section 2.6(a)(v) is replaced with "; and", and a new Section 2.6(a)(vi) is inserted as follows, "the Supplier has paid all liquidated damages due to the OPA (if any), pursuant to Section 2.5(a) of this Agreement."

(e) The letter "(a)" is inserted before the only paragraph in Section 9.5, and the following Section 9.5(b) is added: "Subject to Section 9.2(d)(i), if the OPA terminates this Agreement as a result of the Supplier Event of Default set out in Section 9.1(j), the Supplier shall not be liable to pay the OPA any liquidated damages pursuant to Section 2.5(a) and any liquidated damages so paid shall be returned by the OPA to the Supplier within 20 Business Days of a written request to do so, provided that all Completion and Performance Security the Supplier is required to provide to the OPA pursuant to Section 5.1 has been so provided."

1.2 Milestone Date for Commercial Operation

Section 2.5 is deleted and replaced with the following:

(a) The Supplier acknowledges that time is of the essence to the OPA with respect to attaining Commercial Operation of the Contract Facility by the Milestone Date for Commercial Operation. The Parties agree that Commercial Operation shall be achieved in a timely manner and by the Milestone Date for Commercial Operation, failing which the Supplier shall pay to the OPA within 10 Business Days after receipt of an invoice from the OPA and upon the submission of the certificate referred to in Section 2.6(a)(v), as liquidated damages and not as a penalty, a sum of money equal to 0.25 Dollars per kW multiplied by the Contract Capacity for each calendar day after the Milestone Date for Commercial Operation until Commercial Operation is achieved.

(b) The maximum time period that liquidated damages shall be calculated and payable under Section 2.5(a) by the Supplier for failure to meet the Milestone Date for Commercial Operation shall be ● days. ***[Note to Finalization: This bullet to be filled in with 180 days for solar (PV) Projects and 545 days for wind power Projects.]***

The Supplier acknowledges that even if the Contract Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire on the day before the twentieth or fortieth (as applicable) anniversary date of the Milestone Date for Commercial Operation, pursuant to Section 8.1.