



FEED-IN TARIFF PROGRAM

FIT RULES Version 2.1

December 14, 2012

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SECTION 1 – INTRODUCTION

1.1 Background to the FIT 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 On-Shore Wind, waterpower, Renewable Biomass, Biogas, 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* (Ontario) and Ontario's Long Term Energy Plan, 2010 is to facilitate the increased development of Renewable Generating Facilities of varying sizes, technologies and configurations via a standardized, open and fair process. Solar (PV) Projects are subject to a maximum Contract Capacity of 10 MW and waterpower Projects are subject to a maximum Contract Capacity of 50 MW. The FIT Program is also subject to Procurement Targets.

Projects that are 10 kW or less in Contract Capacity may not apply to the FIT Program but may apply under the microFIT Program and should refer to the Website, which contains the rules for this streamlined process.

This document contains the rules ("**FIT Rules, Version 2.1**") with respect to the FIT Program, Version 2.1, which will be reviewed periodically and may be amended in accordance with Section 11.

Version 2.1 of the FIT Program was implemented pursuant to Directions issued by the Minister of Energy dated April 5, 2012, July 11, 2012, November 23, 2012 and December 11, 2012, supplementing the Direction previously issued by the Minister of Energy and Infrastructure dated September 24, 2009. The Directions were issued in exercise of statutory powers under Sections 25.35 and 25.32 of the *Electricity Act*.

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.

All capitalized terms in these FIT Rules are defined in Appendix 1 – Standard Definitions available on the Website and incorporated hereto.

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 Supplier will be paid 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. Applicants must be aware of required approvals, including environmental approvals, that may be required prior to construction of their facilities.

The OPA encourages Aboriginal, community, school, hospital, university and similar institutions' projects under the FIT Program and these rules provide incentives for projects involving such groups. These rules also provide incentives for Applicants to engage Local Municipalities and Aboriginal communities where Projects are proposed.

Although the FIT Program and the *Green Energy and Green Economy Act, 2009* (Ontario) 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. For this reason, Projects in these areas that are otherwise eligible to participate in the FIT Program may not be able to obtain a FIT Contract. Applications will be screened for sufficient transmission and distribution availability as set out in Section 7 in relation to each Project specifically and under the FIT Program during the relevant Application Period generally. If the Application does not pass such screening, the Application will not receive an Offer Notice and the Application will be Terminated.

The issuance of Offer Notices during an Application Period will be subject to a maximum amount of MWs ("**Procurement Targets**") and Contract Capacity Set-Asides set by the OPA in its discretion and posted on the Website from time to time for all Projects and/or certain categories of Projects to be procured under the FIT Program during such Application Period.

The OPA intends from time to time to announce Application Periods during which Applications may be submitted. The OPA may, in respect of an Application Period, specify the FIT Project Type(s) that may be the subject of an Application submitted during such Application Period.

SECTION 2 – PROJECT ELIGIBILITY REQUIREMENTS

2.1 General Eligibility Requirements

To be eligible to participate in the FIT Program, a proposed generating facility shall:

- (a) be capable of constituting a Renewable Generating Facility;
- (b) have a proposed Contract Capacity of more than 10 kW and less than or equal to:
 - (i) 10 MW in the case of a Solar (PV) Project; and
 - (ii) 50 MW in the case of a waterpower Project;
- (c) in the case of a Non-Rooftop Solar Project:
 - (i) not have its Site located on one or more Properties that are comprised in whole or in part of Specialty Crop Areas;
 - (ii) not have its Site located on one or more Properties that are comprised in whole or in part of CLI Organic Lands; or
 - (iii) not have its Site located on one or more Properties that are comprised in whole or in part of CLI Class 1 Lands, CLI Class 2 Lands or CLI Class 3 Lands, unless the Site is entirely located, at the time of the Application's

Time Stamp (for clarity, in the case of a Pre-Existing Application, the Time Stamp of the corresponding Resubmitted Application), on:

- (A) an airport or aerodrome as indicated on all Local Municipal official plans in effect in each Local Municipality in which the Site is located;
 - (B) a closed landfill as indicated on all Local Municipal official plans in effect in each Local Municipality in which the Site is located;
 - (C) a federal military installation as indicated on all Local Municipal official plans in effect in each Local Municipality in which the Site is located;
 - (D) a Contaminated Property;
 - (E) a Property in respect of which: (I) industrial uses are Lawfully Permitted Uses; (II), such Property is being used for industrial uses; and (III) the Non-Rooftop Solar Project would not constitute the Principal Use of such Property; or
 - (F) in the case of CLI Class 3 Lands, a Property that is owned by a Municipality;
- (iv) notwithstanding the restrictions contained in Sections 2.1(c)(ii) and (iii), in the case where one or more Properties are comprised in part of CLI Organic Lands, CLI Class 1 Lands, CLI Class 2 Lands or CLI Class 3 Lands and lands that are not CLI Organic Lands, CLI Class 1 Lands, CLI Class 2 Lands or CLI Class 3 Lands at the time of the Application's Time Stamp (for clarity, in the case of a Pre-Existing Application, the Time Stamp of the corresponding Resubmitted Application), not have its Site located on the portion of such Property or Properties that is classified as CLI Organic Lands, CLI Class 1 Lands, CLI Class 2 Lands, CLI Class 3 Lands;
- (v) subject to Section 2.1(c)(vii), not have its Site located in whole or in part on a Residential Property that is not an Exempt Residential Property;
- (vi) subject to Section 2.1(c)(vii), not have its Site located in whole or in part on a Property that Abuts a Residential Property unless such Residential Property is an Exempt Residential Property;
- (vii) notwithstanding Sections 2.1(c)(v) and 2.1(c)(vi), a Project's Site may be located:
- (A) entirely (but for clarity, not in part) on Rural-Residential Lands, including where such Rural-Residential Lands Abut a Residential Property; or

- (B) entirely on a combination of lands comprised of Rural-Residential Lands (including where such Rural-Residential Lands Abut a Residential Property) and on a Property or Properties that are not Rural-Residential Lands but are otherwise permitted under this Section 2.1(c) (and for certainty are not ineligible due to Sections 2.1(c)(v) and 2.1(c)(vi))

where the Applicant acknowledges in the Prescribed Form and in the Application that it will:

- (C) comply with the Visual Screening Requirements in respect of such Project; and
- (D) comply with the Setback Requirements;

following execution of and as set out in the FIT Contract;

- (viii) not have its Site located in whole or in part on Property in respect of which commercial uses or industrial uses are Lawfully Permitted Uses and one or more Non-Rooftop Solar Projects, in relation to existing uses at the relevant time, would constitute the Principal Use, provided that, where such Site is located on, in whole or in part, or includes a Property in respect of which a Lawfully Permitted Use is commercial or industrial use and there is no use at the relevant time, the Non-Rooftop Solar Project proposed to be located on such Site will be deemed to be the Principal Use thereof;
- (d) not be an Existing Generating Facility, other than one with a Contract Capacity of less than or equal to 500 kW;
- (e) not have been the subject of 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 more than 12 months before the date that an Application in respect of such proposed generating facility was submitted to the OPA, or as otherwise consented to by the OPA in writing in its discretion;
- (f) not comprise an Incremental Project;
- (g) not comprise a Behind-the-Meter Project;
- (h) have received at least one whole point under Section 6 pursuant to the Priority Points Table;
- (i) not be located on the same Deemed Single Property as a Renewable Generating Facility developed under the microFIT Program that uses the same Renewable Fuel as the Project (the location of a proposed generating facility, Project or Renewable Generating Facility shall not include its Connection Line for the purposes of this provision); and

- (j) except in the case of a waterpower Project, not be located 50 kilometres or more from the proposed Connection Point, as measured from the point on the Site (as proposed in the Application) closest to such proposed Connection Point. For clarity, such proposed Connection Point must be located on the Distribution System or IESO-Controlled Grid, as the case may be, in existence at the date of the Application. A Project shall not be configured for the purpose of avoiding such 50 kilometre requirement. Whether the Project is configured for such purpose shall be determined by the OPA in its reasonable discretion. If the OPA determines that a Project has been configured to avoid such requirement, the proposed generating facility shall be deemed to have not met this eligibility requirement.

2.2 Specific Eligibility Requirements

- (a) For the following types of Projects, the aggregate proposed Contract Capacities of all Projects and any Renewable Generating Facilities under contract with the OPA or the Ontario Electricity Financial Corporation located, or proposed to be located, on a Deemed Single Property may not exceed:
 - (i) 10 MW for Solar (PV) Projects; and
 - (ii) 50 MW for waterpower Projects.
- (b) Subject to Sections 2.1(e), 2.1(f), 2.1(i) and 2.2(a), an Application may only be submitted in respect of a Project that is to be located on the same Deemed Single Property as another existing or proposed Renewable Generating Facility (“**Other Facility**”):
 - (i) that is owned by the Applicant or any Applicant Related Person;
 - (ii) that is the subject of an application or a contract pursuant to the FIT Program or any other contract with the OPA or the Ontario Electricity Financial Corporation; and
 - (iii) that uses the same Renewable Fuel as such Project,
if:
 - (iv) the Other Facility:
 - (A) is a Project that is the subject of an Application submitted during the same Application Period as the Application; or
 - (B) has achieved Commercial Operation;
 - (v) the Project and the Other Facility are separately metered; and
 - (vi) the aggregate proposed Contract Capacities of:
 - (A) the Project; and

- (B) the Other Facility (and any further Other Facility) that is a Project submitted during the same Application Period as the Application,

is less than or equal to:

- (C) for an Application Period in respect only of Small FIT Projects, 500 kW; or
- (D) for an Application Period in respect of all FIT Project Types, the Contract Capacities as set out in Section 2.2(a) in respect of Solar (PV) Projects and waterpower Projects.

In such circumstances:

- (vii) the proposed Contract Capacities of the Project and the Other Facility (and any further Other Facility) that is a Project submitted during the same Application Period shall be aggregated for the purposes (and for no other purposes) of determining the Contract Price applicable to all such Projects, and the Contract Price shall be the same for all such Projects; and
 - (viii) the proposed Contract Capacities of the Project and the Other Facility that either is the subject of an Application submitted during a prior Application Period or is another type of Renewable Generating Facility, shall not be aggregated for the purposes of determining the Contract Price applicable to the Project, and the Contract Price for the Project shall be determined (subject to the applicable FIT Contract and these FIT Rules) without reference to the price applicable to, or proposed Contract Capacity of, such Other Facility.
- (c) No Application may be submitted during an Application Period in respect of a Project that is the same or substantially similar to, taking into account ownership (including ownership by Applicant Related Persons), Economic Interest, location (including whether located on the same Deemed Single Property), equipment, Renewable Fuel or any other features, a Project that is the subject of another Application previously submitted during such Application Period.
 - (d) In relation to a Solar (PV) Project:
 - (i) the sum of the manufacturer's capacity ratings (in DC kW) for normal operation (e.g. continuous output ratings) of the solar modules (i.e. panels) proposed for the Project;

may not exceed 120% of:

- (ii) the sum of the manufacturer's capacity ratings (in AC kW) for normal operation (e.g. continuous output ratings) of the inverters proposed for the Project.

2.3 **Prior Impact Assessments**

- (a) Other than in respect of Renewable Generating Facilities that were connected to the IESO-Controlled Grid or a Distribution System prior to the Announcement Date, an Applicant shall not be permitted to apply for an Impact Assessment in respect of the Project identified in its Application prior to executing a FIT Contract.
- (b) Subject to Section 2.3(a), 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. Any such Applicant must provide evidence to the OPA of such rescission and termination within 10 Business Days of any request.
- (c) A Project will be considered to be 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.

SECTION 3 – APPLICATION COMPLETENESS REQUIREMENTS

3.1 **Application Materials and Requirements**

An Application must be complete and accurate. An Applicant must provide with its Application:

- (a) a complete Application Checklist;
- (b) a certified cheque, bank draft or money order payable to “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**”);
- (c) security (“**Application Security**”) in the following amounts:
 - (i) for Applications other than where an Application is in respect of an Aboriginal Participation Project or a Community Participation Project described in Section 3.1(c)(ii), security in an amount that is the greater of:
 - (A) \$1,000.00; and
 - (B) either:
 - (1) \$20 per kW of proposed Contract Capacity, in respect of Solar (PV) Projects; or
 - (2) \$10 per kW of proposed Contract Capacity, in respect of all other Projects; and

- (ii) for Applications where an Application is in respect of an Aboriginal Participation Project or a Community Participation Project and the applicable Participation Level as of the date of the Application is greater than 50%, security in an amount equal to \$5 per kW of proposed Contract Capacity, regardless of Renewable Fuel;
- (d) Application Security must be in the form of either (i) where the amount is less than or equal to \$10,000, a certified cheque, bank draft, money order payable to and in favour of the “Ontario Power Authority”; and (ii) where the amount is greater than \$10,000, a certified cheque, bank draft, money order payable to and in favour of “Ontario Power Authority” 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 Prescribed Form. At any time the OPA holds a letter of credit as Application Security, the Supplier shall ensure that such letter of credit does not expire or terminate for any reason prior to a date that is 60 days from such time.

If in the form of a certified cheque, bank draft or money order, the Application Security must be a separate certified cheque, bank draft or money order than the one submitted in respect of the Application Fee.

If the Application is accepted and the Applicant is awarded an Offer Notice, subject to these FIT Rules, the Application Security will be returned to the Applicant (or in the case of a letter of credit, otherwise cancelled) upon the OPA’s receipt of the Completion and Performance Security, in accordance with Section 8.2(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. Except as otherwise set out in these FIT Rules (including as set out in Sections 8.2(f) and 13.1(c)), Application Security shall be returned to Applicants (or in the case of a letter of credit, otherwise cancelled) in respect of Projects that were not the subject of any Offer Notice;

- (e) an authorization letter in the Prescribed Form. 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, 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;
- (f) where an Application is in respect of a Project whose Site is located in whole or in part on provincial Crown lands in respect of which the Applicant has not been awarded Applicant of Record Status or Site Access Rights:
 - (i) the Applicant must provide in its electronic Application, in respect of the portion of the Site located on provincial Crown lands, a geographical description of the provincial Crown lands for which it seeks Site Access Rights in the form of Grid Cells or, for waterpower Projects, Waterpower Site Number(s), or in the absence thereof, the GPS co-ordinates of the Site; and

- (ii) the Applicant must provide in its hard copy Application, provided pursuant to Section 5.1(d), a copy of the Crown Land Site Report that must have been submitted to the MNR prior to the submission of the hard copy Application;
- (g) unless an Application is in respect of a Project that is subject to Section 3.1(f) in respect of the entirety of its Site, a completed Prescribed Form containing or accompanied by evidence that the Applicant has Site Access Rights with respect to all lands on which the Site is located. Such Site Access Rights may only be conditional in favour of the Applicant and may be subject to such conditions as may be required by the Crown. In the case of a Site Access Right that is an option or similar right, it must be exercisable and valid from the date of the Application to a date that may be reasonably expected to be the Milestone Date for Commercial Operation for the Project, provided that:
 - (i) where an Application is in respect of a Project on federal Crown lands, the Applicant shall be deemed to have the necessary Site Access Rights for these purposes where it has a “Priority Permit” issued pursuant to the *Dominion Water Power Act* (Canada), or equivalent binding commitment from the federal Crown;
 - (ii) where an Application is in respect of a Project on lands that are within the meaning in paragraphs (a), (b) or (c) of the definition of First Nation Lands, the Applicant must provide a copy of the document(s) evidencing Site Access Rights held by the Applicant; or
 - (iii) where an Application is in respect of provincial Crown lands (in whole or in part), and the Applicant has been awarded Applicant of Record Status or Site Access Rights in respect of all or a portion of such provincial Crown lands, the Applicant must provide documents evidencing its Applicant of Record Status or Site Access Rights for such provincial Crown lands; and
- (h) for waterpower Projects, a Waterpower Declaration in the Prescribed Form.

3.2 Representations and Warranties

An Applicant must represent and warrant in an Application, in respect of the Project that is the subject of the Application that:

- (a) the Applicant has made all due inquiry into requirements to obtain any applicable Renewable Energy Approval and other equivalent environmental assessments or approvals;
- (b) the Applicant has, in respect of any applicable Renewable Energy Approval and other equivalent environmental assessments or approvals, read and understood the requirements and has attended at the Site;
- (c) for Projects whose Site is not located on provincial Crown lands, the Applicant possesses Site Access Rights in respect of the portion of the Site not located on provincial Crown lands;

- (d) for Projects whose Site is located in whole or in part on provincial Crown lands:
 - (i) the Applicant has obtained Site Access Rights or has been awarded Applicant of Record Status for all of the provincial Crown lands on which its Site is located; or
 - (ii) no Person has been awarded Applicant of Record Status nor obtained Site Access Rights for any of the provincial Crown lands on which the Applicant's Site is located;
- (e) for Projects that are not Rooftop Solar Projects, the Site and the Property or Properties on which the Site is located are of sufficient size so as to accommodate the Project and any applicable Setback Requirements in accordance with the criteria prescribed by the OPA on the Website. The OPA may, in its sole and absolute discretion, approve Applications that do not meet the minimum size criteria provided that the Applicant provides evidence in its Application, using the Prescribed Form, that the Site and the Property or Properties on which the Site is located is of sufficient size so as to accommodate the Project and any applicable Setback Requirements;
- (f) for Rooftop Solar Projects, the Applicant has obtained a written confirmation from a Professional Engineer, in the Prescribed Form, stating that the Existing Building has sufficient usable surface area for the Project and that it is either:
 - (i) suitable to support the Rooftop Solar Project; or
 - (ii) would be suitable to support the Rooftop Solar Project after implementation of improvements, a complete listing and particulars of which are described in such confirmation,

provided that any such confirmation under this Section 3.2(f) shall be without prejudice to the requirements in Section 2.5 of the FIT Contract and that Commercial Operation be achieved in a timely manner and by the Milestone Date for Commercial Operation, as provided thereunder;
- (g) the Project is not located:
 - (i) on the same Deemed Single Property as a Renewable Generating Facility developed under the microFIT Program that uses the same Renewable Fuel as the Project (the location of a Project or Renewable Generating Facility shall not include its Connection Line for the purposes of this provision); or
 - (ii) except in the case of a waterpower Project, 50 kilometres or more from the proposed Connection Point, as measured from the point on the Site (as proposed in the Application) closest to such proposed Connection Point. For clarity, such proposed Connection Point must be located on the Distribution System or IESO-Controlled Grid, as the case may be, in existence at the date of the Application;
- (h) it complies with the requirements of Section 2.1(e);

- (i) it is not an Incremental Project;
- (j) all statements, supporting documentation, specifications, data, confirmations, representations and information that have been set out in the Application and supporting evidence and documentation are complete and accurate in all material respects and there is no material information omitted from the Application or supporting evidence or documentation which would make the information in the Application or supporting evidence or documentation misleading or inaccurate; and
- (k) neither the Applicant nor any Applicant Related Person in respect of such Applicant has submitted a separate Application in respect of a separate Project except as disclosed to the OPA in the Prescribed Form, and where such separate Application has been submitted, that the Site of the Project that is the subject thereof is not located on the same Deemed Single Property as the Site of a Project that is the subject of the Application other than in accordance with Sections 2.1(i), 2.2(a) and 2.2(b) (for clarity, the location of the Site of a Project shall not include its Connection Line for the purposes of this provision).

3.3 **Other Application Requirements**

- (a) If an Application is in respect of a Participation Project and/or a CCSA Eligible Project, such Application must include Supporting Documentation evidencing:
 - (i) the requisite Participation Level with respect to eligibility for Priority Points and eligibility as a CCSA Eligible Project, if claimed;
 - (ii) the Price Adder claimed, if any; and
 - (iii) the Application Security amount.
- (b) In the case of a Community Participation Project and the Co-op constituting the Community Investment Member thereof, the Application must include, from 35 Co-op Members that are Property Owners (in the case of a Small FIT Project that is not a CCSA Eligible Project), or from 50 Co-op Members that are Property Owners (in the case of a Large FIT Project or a Small FIT Project that is a CCSA Eligible Project):
 - (i) signed consent:
 - (A) to the collection, use and disclosure by the OPA of such Co-op Member's personal information contained in or supplementing the Application; and
 - (B) to the OPA contacting each such member for verification purposes; and
 - (ii) a statutory declaration attesting that the Co-op Member has been the registered owner of real property in the Municipality in which the Project is located in whole or in part since the date two years prior to the earlier of:

(A) the date of such statutory declaration; and

(B) the applicable Application Start Date,

and continues to own such real property as at the date thereof;

such consent and statutory declaration being in the Prescribed Form.

- (c) An Applicant must provide the OPA with a continuously valid e-mail address for purposes of correspondence related to the FIT Program, which address the Applicant shall amend from time to time as necessary by providing written notice to the OPA. An Applicant must regularly check its “My FIT Home Page” for messages and notices from the OPA. The OPA will not be responsible for an Applicant’s failure to comply with this provision.
- (d) Where an Application is in respect of a Non-Rooftop Solar Project, the Application must include the following evidence, satisfactory to the OPA:
- (i) a current map from the Canada Land Inventory showing the CLI map quadrant number(s), Site, and Property or Properties on which the Project is located, whether in whole or in part;
 - (ii) for Projects located in one or more Municipalities in which Specialty Crop Areas are located, a current map indicating the outline of the proposed Site, the outline of the Property or Properties on which the Applicant has Site Access Rights, and the location of the Specialty Crop Areas in the relevant Municipality or Municipalities;
 - (iii) if the Application would otherwise be ineligible for the FIT Program except as permitted under the provisions of Section 2.1(c)(iii)(A) through 2.1(c)(iii)(F) or Section 2.1(c)(iv), as follows:
 - (A) on a copy of a map contained in the relevant Local Municipal official plan (and associated schedules):
 - (1) if the Project’s Site is on an airport or aerodrome, as described in Section 2.1(c)(iii)(A), outlines of the proposed Site and the Property or Properties on which the Applicant has Site Access Rights;
 - (2) if the Project’s Site is on a closed landfill, as described in Section 2.1(c)(iii)(B), outlines of the proposed Site and the Property or Properties on which the Applicant has Site Access Rights;
 - (3) if the Project’s Site is located on a federal military installation as described in Section 2.1(c)(iii)(C), outlines of the proposed Site and the Property or Properties on which the Applicant has Site Access Rights;

- (B) if the Project's Site is on a Contaminated Property, a copy of a "Phase Two Environmental Site Assessment" conducted in accordance with Part XV.1 of the *Environmental Protection Act* (Ontario), completed within one year prior to the Time Stamp of the Application and a letter of confirmation from the author of the Phase Two Environmental Site Assessment or another Professional Engineer or member in good standing of the Association of Professional Geoscientists of Ontario stating that as of the date of the letter of confirmation: (I) the results of the Phase Two Environmental Site Assessment confirm that there are contaminant levels in the soil and/or groundwater in excess of applicable standards for that type and location of property as set out in "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*" issued by the Ministry of the Environment dated April 15, 2011 and (II) where the Phase Two Environmental Site Assessment was undertaken more than one year before the Time Stamp of the Application, that the results and findings in the Phase Two Environmental Site Assessment remain valid based upon reasonable inquiry;
- (C) if the Project's Site is on lands described in Section 2.1(c)(iii)(E), the Prescribed Form and attachments required under Section 3.3(d)(v);
- (D) if the Project's Site is located on CLI Class 3 Lands owned by a Municipality as described in Section 2.1(c)(iii)(F), a land titles or land registry search indicating the ownership of the Property or Properties on which the Site is located;
- (E) if the Project's Site is located on lands as described in Section 2.1(c)(iv):
 - (1) a soil study on the Property (or Properties) on which the Applicant has Site Access Rights that uses the prescribed standardized methodology accompanied by a peer review process, as set out by the Ontario Ministry of Agriculture, Food and Rural Affairs ("OMAFRA") and the Ministry of Energy demonstrating that the Site is not located on CLI Organic Lands, CLI Class 1 Lands, CLI Class 2 Lands or CLI Class 3 Lands. The soil study must be completed by a soil scientist that meets minimum qualifications. The soil study methodology, peer review process and minimum qualifications is located at the URL:
<http://www.energy.gov.on.ca/en/fit-and-microfit-program/fit-soilstudy/>; and
 - (2) an attestation in the Prescribed Form confirming that the Person carrying out the prescribed peer review process has no direct or indirect professional, financial or personal affiliation with or interest in the Project, the soil

scientist referred to in Section 3.3(d)(iii)(E)(1), the Applicant or its Affiliates (other than payment for the review itself), that the land evaluation/soil study and its results are consistent with accepted survey methodologies, industry standards and best practice, and that that the Applicant's soil study in respect of such Project is complete and accurate.

(iv) in respect of a Project whose Site is located in whole or in part on one or more Properties that are not Rural-Residential Lands, in respect of such Properties that are not Rural-Residential Lands, the following in the Prescribed Form:

- (A) a written opinion of a Land Use Planner (including a director of planning or equivalent municipal official qualified as such); or
- (B) a written certification of a chief building official, municipal chief administrative officer, municipal clerk, or equivalent official of each Municipality in which the Project is located, in whole or in part;

in each case attaching a current municipal zoning map (if located in an organized municipality) or other current zoning map (if located in an area not organized as a municipality that has planning control) clearly showing the Site, the Property or Properties on which the Site is located (in this paragraph (iv), the "**First Property(ies)**") and Abutting Properties thereto, and their relevant zoning designation, opining or certifying, as the case may be, that the First Property(ies) and all Properties Abutting the First Property(ies) either:

- (1) are not Residential Propert(ies); or
- (2) are Exempt Residential Propert(ies);

(v) in respect of a Project whose Site is located, in whole or in part, on Property on which commercial uses or industrial uses are Lawfully Permitted Uses, the following in the Prescribed Form:

- (A) a written opinion of a Land Use Planner (including a director of planning or equivalent municipal official qualified as such); or
- (B) a written certification of a chief building official, municipal chief administrative officer, municipal clerk, or equivalent official of each Municipality in which the Project is located, in whole or in part;

in each case attaching a current municipal zoning map (if located in an organized municipality) or other current zoning map (if located in an area not organized as a municipality that has planning control) clearly showing the Site, the Property or Properties on which the Site is located and their relevant zoning designation, opining or certifying, as the case

may be, that the Non-Rooftop Solar Project does not constitute the Principal Use of the Property; and

- (vi) in respect of a Project whose Site is located, in whole or in part, on one or more Properties that are Rural-Residential Lands, in respect of only such Properties that are Rural-Residential Lands, the following in the Prescribed Form:

- (A) either;

- (1) a written opinion of a Land Use Planner (including a director of planning or equivalent municipal official qualified as such); or
 - (2) a written certification of a chief building official, municipal chief administrative officer, municipal clerk, or equivalent official of each Municipality in which the Project is located, in whole or in part,

in each case, attaching a current municipal zoning map (if located in an organized municipality) or other current zoning map (if located in an area not organized as a municipality that has planning control) clearly showing the Site, such Property or Properties on which the Site is located (in this paragraph (vi), the “**First Property(ies)**”) and Abutting Properties thereto, and their relevant zoning designation, and opining or certifying, as the case may be, (1) that such First Property(ies) is or are Rural-Residential Lands; and (2) that such First Property(ies) either: (3) Abuts a Residential Cluster or, (4) that such First Property(ies) does not Abut a Residential Cluster, as the case may be, and such First Property(ies) either (5) Abuts a Residential Property or (6) does not Abut a Residential Property, as the case may be; and

- (B) an acknowledgment of the Applicant in the Prescribed Form confirming that it will:

- (1) comply with the Visual Screening Requirements in respect of such Project; and
 - (2) comply with the Setback Requirements.

- (e) For an Application for a Project whose Site is located in whole or in part on provincial Crown lands where the Applicant has not been awarded Applicant of Record Status and does not have Access Rights, the OPA must have been notified by MNR in writing that the Applicant's Crown Land Site Report is complete, as determined by MNR based on its review criteria. Such determination by MNR shall not, solely by virtue thereof, provide the Applicant with Site Access Rights nor Applicant of Record Status.

- (f) Where an Application is in respect of a Rooftop Solar Project, an Applicant must provide with its Application a written confirmation in the Prescribed Form from a Professional Engineer as described in Section 3.2(f).
- (g) An Applicant must provide with its Application either:
 - (i) a voided cheque in respect of a bank account of the Applicant; or
 - (ii) where a third party issued Application Security in the form of a certified cheque, bank draft or money order, a voided cheque in respect of a bank account of such third party and a direction from the Applicant in the Prescribed Form directing the OPA to make any payments owed to the Applicant to such third party.

SECTION 4 – OVERVIEW OF APPLICATION PROCESS

4.1 Overview of Evaluation Process

The evaluation of Applications received during an Application Period will be conducted by the OPA in six distinct stages as follows.

Stage 1 – Application Completeness Requirements: In Stage 1, each Application will pass or fail depending on whether the Application meets all the requirements as set out in Section 3 and Section 5.

Stage 2 – Eligibility Requirements: In Stage 2, each Application will pass or fail depending on whether the Application meets the eligibility requirements as set out in Section 2.

Stage 3 – Ranking of CCSA Eligible Projects: In Stage 3, each Application that passes Stage 2 will be evaluated to determine whether it qualifies as a CCSA Eligible Project as set out in Section 6 and it will be awarded a point score based on the prioritization process contained in Section 6. Applications will then be ranked in respect of the applicable Contract Capacity Set-Aside by either:

- (i) Priority Points and by Time Stamp; or
- (ii) with respect to Resubmitted Applications, Priority Points and the Resubmitted Application's Pre-Existing Application Time Stamp.

Stage 4 – Connection Availability for CCSA Eligible Projects: In Stage 4, Applications in respect of CCSA Eligible Projects will, in respect of an applicable Contract Capacity Set-Aside, in order of rank, (as determined in Stage 3) be assessed under the TAT and the DAT, as applicable, and an Application will be added to the Offer List, in accordance with Section 8.1 and subject to these FIT Rules, if the Project described in such Application passes the TAT and, if applicable, the DAT, and if sufficient availability remains within the applicable Contract Capacity Set-Aside.

This procedure shall be repeated until each of the Contract Capacity Set-Asides are fully allocated, provided that, for the First Nation CCSA and the Métis CCSA, the capacity shall be allocated as set out in Section 7.6(f) and in the case of unused capacity in the

First Nation CCSA or the Métis CCSA, the capacity in such Contract Capacity Set-Aside shall be allocated as set out in Sections 7.6(d) or (e), as applicable.

Stage 5 – Ranking of other Projects: After all Contract Capacity Set-Asides are fully allocated, or there are no remaining Applications in respect of CCSA Eligible Projects, remaining Applications will then be ranked by either:

- (i) their Priority Points and by Time Stamp; or
- (ii) with respect to Resubmitted Applications, their Priority Points and the Resubmitted Application's Pre-Existing Application Time Stamp,

regardless of whether they would otherwise have qualified as CCSA Eligible Projects.

Stage 6 – Connection Availability and Procurement Targets: In Stage 6, Applications will in order of rank (as determined in Stage 5) be assessed under the TAT and the DAT, as applicable, and an Application will be added to the Offer List, in accordance with Section 8.1, if the Project described in such Application passes the TAT and, if applicable, the DAT, and if sufficient availability remains within the applicable Procurement Targets.

4.2 OPA Rights

- (a) 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 Terminated as being incomplete. Except in response to such requested clarification, an Applicant may not supplement, amend, correct or modify its Application in any respect, including by providing the correct Application Fee or Application Security, once received by the OPA.
- (b) The OPA reserves the right to Terminate any incomplete Application, any Application that does not satisfy all of the eligibility requirements set out in Section 2 and any Application in respect of which the included information is not satisfactory to the OPA or its advisers in any respect in its discretion. The Application Fee will not be refunded in such circumstances. Termination by the OPA of an Application may take place by notice to the corresponding Applicant at any time following the receipt of such Application by the OPA. A decision by the OPA to Terminate any Application shall be final and binding and not subject to appeal or judicial review.

SECTION 5 – APPLICATION SUBMISSION AND REVIEW

5.1 Application Submission

- (a) Applicants who wish to participate in the FIT Program shall submit an Application to the OPA in accordance with these FIT Rules and any instructions posted on the Website from time to time, together with all documents required to

establish that the Applicant has satisfied all of the eligibility criteria set out herein. The OPA's intention is that such instructions will from time to time give prior notice of a period (the "**Application Period**") during which the OPA will accept Applications and the FIT Project Type in respect of which Applications may be submitted during such Application Period.

- (b) The OPA will only accept Applications commencing on the Application Start Date and terminating at 11:59:59 pm EPT on the Application End Date (the "**Application End Time**"). Applications received following such time may not be submitted and will not be accepted. Applications that are not for the FIT Project Type in respect of which Applications may be submitted during an Application Period, as announced on the Website prior to such Application Period, will not be accepted during such Application Period.
- (c) An Applicant is required to submit an Application Form, at which point they will be issued a Time Stamp and a reference number.
- (d) Any evidence and supporting documentation in connection with an Application not required to be submitted electronically under these FIT Rules and instructions posted on the Website, including the Application Fee and the Application Security, 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 (for clarity, such hard copy materials may follow the Application End Time). The Applicant must mark the FIT reference number on the envelope containing the delivered materials and on all of such delivered materials prior to submission. For clarity, notwithstanding that such delivered materials may contain documents that were declared, executed or created prior to the Applicant obtaining a FIT reference number, the Applicant shall nevertheless mark such delivered materials with the FIT reference number prior to delivering such delivered materials to the OPA. Each item in the envelope must be marked with the reference number, including the Application Fee and Application Security. Hard-copy materials relating to separate Applications must be provided in separate envelopes. No envelope may be marked with more than one reference number.
- (e) If the OPA does not receive all the required materials by 5:00 p.m. EPT on the fifth Business Day after the day the Application was submitted electronically (without prejudice to the requirement that Applications be submitted by the Application End Date), the Application will be Terminated, any Application Security will be returned to the Applicant (or in the case of a letter of credit, otherwise cancelled), and the Time Stamp, reference number on the electronic submission of the Application, and any Pre-Existing Application Time Stamp will be forfeited. The Application Fee will be retained by the OPA for its own account and will not be returned in such circumstances.

5.2 **Transitional Provisions for Pre-Existing Applications**

- (a) Notwithstanding Section 5.1(a), where a Pre-Existing Applicant submitted to the OPA an Application in respect of a Project, such Application was dated prior to the Announcement Date and no Offer Notice has been issued in respect of such

Application (a “**Pre-Existing Application**”), such Pre-Existing Application will be subject to these FIT Rules, Version 2.1, and, for clarity, not the FIT Rules in effect at the time such Pre-Existing Application was submitted. An Applicant in relation to a Pre-Existing Application may submit an Application (a “**Resubmitted Application**”) during an Application Period established as provided in these FIT Rules. A Resubmitted Application shall be subject to the version of these FIT Rules in force during such Application Period and to all the requirements applicable to any other Application submitted under these FIT Rules during such Application Period, and, for certainty, need not contain the same information as the Pre-Existing Application, except as expressly provided in Section 5.2(e).

- (b) If a Pre-Existing Application was for a Small FIT Project and that Applicant does not submit a Resubmitted Application during the first Application Period for Small FIT Projects, that Pre-Existing Application will be Terminated.
- (c) When a Pre-Existing Application of an Applicant was for a Project that is a Large FIT Project, that Applicant may only submit a Resubmitted Application in respect of such Application for a Project that is a Large FIT Project during the first Application Period for Large FIT Projects. If a Pre-Existing Application of an Applicant was for a Project that is a Large FIT Project and that Applicant does not submit a Resubmitted Application during the first Application Period for Large FIT Projects, that Pre-Existing Application will be Terminated.
- (d) Where a Resubmitted Application is submitted, no information in the corresponding Pre-Existing Application, nor any supporting evidence or materials in relation to such Pre-Existing Application, will be considered or reviewed by the OPA in relation to the Resubmitted Application.
- (e) For an Applicant submitting a Resubmitted Application in respect of a Project:
 - (i) the Project must be located on the same Site as the Project described in the Pre-Existing Application, provided that the Site may be reduced in size where the Contract Capacity is less than the Contract Capacity of the Project described in the Pre-Existing Application;
 - (ii) the Project must have a Contract Capacity no greater than the Contract Capacity of the Project described in the Pre-Existing Application; and
 - (iii) the Applicant must be the same Person and have the same name as the Pre-Existing Applicant that is set out in the Pre-Existing Application, provided that:
 - (A) where the existing Economic Interests in the Applicant are changed for the purpose of the Project qualifying as a Participation Project or a CCSA Eligible Project, the name of such Person may be changed for such purposes, but for no other purpose;
 - (B) where the name of the Applicant has changed due to circumstances other than a change of Control of the Applicant or

assignment of the Application, the name of such Person may be changed with the consent of the OPA in its sole and absolute discretion following receipt by the OPA of a completed Prescribed Form setting out the reasons for the change of name of the Applicant; and

(C) a Pre-Existing Applicant may by completing and submitting the Prescribed Form assign an Application to a Person other than a Natural Person (in this paragraph (C), an “**Assignee Person**”) where:

(1) the Pre-Existing Applicant Controls such Assignee Person by means of directly holding the legal and beneficial interest (other than solely as the beneficiary of an unrealized security interest) in securities of such Assignee Person carrying votes or ownership interests sufficient to elect or appoint fifty per cent (50%) or more of the individuals of who are responsible for the supervision or management of that Assignee Person;

(2) the Pre-Existing Applicant holds a Direct Economic Interest in the Assignee Person equal to or greater than 49%;

(3) no Person other than:

(i) the Pre-Existing Applicant; and

(ii) one or more Persons that Control the Pre-Existing Applicant;

Controls the Assignee Person;

(4) the assignment is carried out for the purpose of designation as a CCSA Eligible Project or increasing the Priority Points awarded to the Application by facilitating the issuance, grant or transfer of an Economic Interest to an Aboriginal Community, Community Investment Member or Education or Health Entity, which issuance, grant or transfer would not have been commercially reasonable absent such assignment; and

(5) the Assignee Person has provided the OPA with Application Security in accordance with Section 3.1(c).

(f) A Resubmitted Application may be submitted by accessing the Pre-Existing Applicant’s My FIT Home Page and submitting an Application in accordance with the instructions set out therein including identification by the Pre-Existing Applicant of the Pre-Existing Application’s FIT Reference Number. The OPA will assign, as the deemed Time Stamp of the Resubmitted Application, the Pre-

Existing Application Time Stamp for ranking in accordance with Sections 4.1 and 6.2 and for no other purpose.

- (g) For each Resubmitted Application, the Application Fee and Application Security must be submitted as provided in Sections 3.1(b) and (c). For clarity, the Application Fee and Application Security submitted to the OPA with the corresponding Pre-Existing Application shall be returned to the Applicant that submitted the Pre-Existing Application (or in the case of a letter of credit, otherwise cancelled).
- (h) For clarity, the OPA reserves the right to Terminate by notice to the Applicant any Pre-Existing Applications that are not Resubmitted Applications, and in connection with any such Termination, the Application Fee and any Application Security submitted to the OPA with such Pre-Existing Application shall be returned to the Applicant that submitted the Pre-Existing Application or any assignee duly consented to by the OPA or permitted hereunder (or in the case of a letter of credit, otherwise cancelled).

5.3 Completeness and Eligibility Review

- (a) The OPA will review each Application submitted during the corresponding Application Period to assess whether each Application is complete in accordance with the requirements of Section 3 and Section 5. Any such Application that is not considered complete by the OPA in its discretion will be subject to Termination by the OPA in accordance with Section 4.2(b).
- (b) For an Application whose Site is located in whole or in part on provincial Crown lands, the Application will not be considered complete or eligible for the purposes of these FIT Rules unless the MNR has indicated to the OPA that the Applicant has met with the MNR's Crown Land Site Report's timing, completeness and eligibility requirements with respect to the provincial Crown lands that form the subject of the Application.
- (c) Following the assessment carried out in Section 5.3(a), the OPA will review each complete Application to assess whether such complete Application complies with the eligibility requirements of Section 2. Any such Application that is not considered eligible by the OPA in its discretion will be subject to Termination by the OPA in accordance with Section 4.2(b).

SECTION 6 – APPLICATION PRIORITIZATION AND RANKING

6.1 Prioritization

- (a) Projects described in certain Applications shall be eligible to be designated as CCSA Eligible Projects. Further, certain Applications, as set out in Figure 6.1: Priority Points Table, will be eligible to receive priority points (“**Priority Points**”) in the ranking process. Each Application may apply for:
 - (i) designation as a CCSA Eligible Project; and

- (ii) Priority Points in the amounts (and only in the amounts) set out in the Priority Points Table based on Project Type and Non-Project Type.
- (b) An Application will only be:
 - (i) eligible to be a CCSA Eligible Project if requested in the Application and if so determined by the OPA using the Supporting Documentation provided by the Applicant; and
 - (ii) awarded Priority Points for which it has applied in the Application, and as determined by the OPA using the Supporting Documentation provided by the Applicant, for which it is eligible.

For clarity, an Application in respect of a CCSA Eligible Project shall also be eligible to be awarded Priority Points.

- (c) Priority Points awarded by Project Type may not be combined with other Priority Points awarded by Project Type. Priority Points awarded by Non-Project Type may be combined with Priority Points awarded by Project Type and/or other Non-Project Type categories, provided that:
 - (i) for an Application that receives Priority Points as an Aboriginal Participation Project, such Application shall be ineligible to receive Priority Points for an Aboriginal Support Resolution of any Aboriginal Community that has an Economic Interest in the Applicant; and
 - (ii) for an Application that receives Priority Points as an Education or Health Participation Project, such Application shall be ineligible to receive Priority Points for having an Education or Health Host.
- (d) Priority Points will be awarded under the Non-Project Type heading in respect of a Project described in an Application as follows:
 - (i) in order to receive Priority Points under the “Municipal Council Support” category (as set out in Figure 6.1), a Project must have received the support of all Local Municipalities in which, in whole or in part, the Project is located, in the form of a Municipal Council Support Resolution;
 - (ii) in order to receive Priority Points under the “Aboriginal Support” category (as set out in Figure 6.1), a Project:
 - (A) must be a Small FIT Project;
 - (B) must be located in whole or in part on First Nation Lands or Métis Lands; and
 - (C) must have received
 - (1) in respect of Projects located on First Nation Lands, the support of all Corresponding First Nation Communities

in the form of an Aboriginal Support Resolution from each such Corresponding First Nation Community, which Aboriginal Support Resolution, for a Small FIT Project located on First Nation Lands within the meaning in paragraphs (d), (e) or (f) of the definition of First Nation Lands, must be accompanied by evidence that the lands meet the definitions contained in such paragraphs; or

- (2) the support of all Métis Communities who hold the legal or beneficial title to such Métis Lands, whether directly or indirectly, in the form of an Aboriginal Support Resolution from each such Métis Community, which Aboriginal Support Resolution must be accompanied by evidence that the lands meet the definition of Métis Lands;
- (iii) in order to receive a Priority Point under the “Project Readiness” category (as set out in Figure 6.1), a Project must evidence Project Readiness;
- (iv) in order to receive either a Priority Point or half of a Priority Point under the heading “Pre-Existing Application Time Stamp” (as set out in Figure 6.1) an Application must be a Pre-Existing Application, and have a Pre-Existing Application Time Stamp dated on or prior to July 4, 2011 or dated on or after July 5, 2011, respectively;
- (v) in order to receive Priority Points under the “Education or Health Host” category (as set out in Figure 6.1), a Project must have an Education or Health Host; and
- (vi) in order to receive a Priority Point under the “System Benefit” category (as set out in Figure 6.1), a Project must provide System Benefit.

FIGURE 6.1: PRIORITY POINTS TABLE

PROJECT TYPE	PRIORITY POINTS
Community Participation Project	3
Aboriginal Participation Project	3
Education or Health Participation Project	2
NON-PROJECT TYPE	PRIORITY POINTS
Municipal Council Support	2
Aboriginal Support	2
Project Readiness	1
Pre-Existing Application Time Stamp is on or prior to July 4, 2011	1
Pre-Existing Application Time Stamp is on or after July 5, 2011	0.5
Education or Health Host	2
System Benefit	1

NOTE: Priority Points awarded by Project Type may not be combined with other Priority Points awarded by Project Type. Only certain Priority Points awarded by Non-Project Type may be combined with other Priority Points awarded by Project Type and/or other Non-Project Type. See Section 6.1(c) above.

6.2 Ranking

The OPA will rank Applications that are complete and eligible based on the following factors:

(a) **CCSA Eligible Projects:**

- (i) **Points:** CCSA Eligible Projects (in respect of a particular Contract Capacity Set-Aside) with more Priority Points shall receive a higher ranking within such Contract Capacity Set-Aside than CCSA Eligible Projects with fewer Priority Points; and
- (ii) **Time Stamp:** For CCSA Eligible Projects (in respect of a particular Contract Capacity Set-Aside) with the same number of Priority Points as other CCSA Eligible Projects, an earlier Time Stamp (or for Resubmitted Applications, the Pre-Existing Application Time Stamp) will be ranked within such Contract Capacity Set-Aside ahead of a later Time Stamp (or for Resubmitted Applications, the Pre-Existing Application Time Stamp), provided that Applications with the same number of Priority Points and the same Time Stamp (or for Resubmitted Applications, the Pre-Existing Application Time Stamp), will be ranked randomly.

(b) **Other Projects:**

- (i) **Points:** Applications in respect of Projects that are not CCSA Eligible Projects (including, for clarity, Projects that would otherwise have been

offered FIT Contracts as Contract Capacity Set-Aside Projects but for the relevant Contract Capacity Set-Aside in respect of such Project having been reached) with more Priority Points shall receive a higher ranking than other such Applications having fewer Priority Points; and

- (ii) **Time Stamp:** For Applications in respect of Projects that are not CCSA Eligible Projects (including, for clarity, Projects that would otherwise have qualified as Contract Capacity Set-Aside Projects but for the Contract Capacity Set-Aside in respect of such Project having been reached) with the same number of Priority Points as other such Applications, Applications that have an earlier Time Stamp (or for Resubmitted Applications, the Pre-Existing Application Time Stamp) will be ranked ahead of Applications that have a later Time Stamp (or for Resubmitted Applications, the Pre-Existing Application Time Stamp), provided that Applications with the same number of Priority Points and the same Time Stamp (or for Resubmitted Applications, the Pre-Existing Application Time Stamp), will be ranked randomly.

SECTION 7 – CONNECTION AVAILABILITY

7.1 Assessment of CCSA Eligible Projects

Following ranking of Applications in respect of CCSA Eligible Projects pursuant to Section 6.2(a), such Applications will be assessed, in order of rank, taking into account:

- (a) whether there is availability based on the TAT and the DAT;
- (b) whether the Project would cause an applicable Contract Capacity Set-Aside to be met or exceeded; and
- (c) the criteria set out in Section 7.6 with respect to common Aboriginal Participants for Applications.

7.2 Assessment of Other Projects

Following ranking of remaining Applications pursuant to Section 6.2(b), such Applications will be assessed, in order of rank, as to:

- (a) whether there is availability based on the TAT and the DAT;
- (b) whether the Project would cause an applicable Procurement Target to be met or exceeded taking into consideration any MWs within an applicable Procurement Target reserved for particular types of Projects as set out on the Website from time to time.

7.3 Connection Availability

All interested Applicants are urged to consult with the applicable LDC or Transmitter prior to submitting an Application. The OPA, in consultation with the IESO, applicable LDCs, applicable Transmitters and other agencies and stakeholders as appropriate, may publish on the Website transmission availability tables, which are intended as a guide.

The OPA reserves its discretion to determine whether an Application can pass the TAT and if applicable, the DAT.

7.4 Transmission Availability Test

The Transmission Availability Test (or “**TAT**”) is a process to screen Applications for their impact on the IESO-Controlled Grid. The TAT includes considerations for all prior OPA contracts, prior Applications that have been processed, system capacity allocated to other OPA programs and any other generating facilities that are existing, committed or are the subject of a ministerial direction, and minor upgrades to the Transmission System whose costs would be Connection Costs, limited as follows:

- (a) upgrades identified by the OPA in its discretion, in respect of Projects directly connected to a Transmission System, to a transmission line section that is 2 kilometres or less; and
- (b) new or upgrade to special protection systems which may be determined by the OPA in its discretion and are acceptable to the IESO and the applicable Transmitter.

It should be noted that the TAT is a screening process and as such it does not ensure ability to connect the Project.

7.5 Distribution Availability Test

The Distribution Availability Test (or “**DAT**”) is a process to screen Applications for their impact on the relevant Distribution System. The DAT includes considerations for the TAT, all prior OPA contracts, prior Applications that have been processed and any other generating facilities that are existing, committed or are the subject of a ministerial direction. It should be noted that the DAT is a screening process and as such it does not ensure ability to connect the Project.

7.6 Contract Capacity Set-Asides

- (a) Contract Capacity Set-Asides shall apply with respect to an Application Period and any such Contract Capacity Set-Aside will establish the maximum amount of MWs that will be procured during an Application Period in respect of such Contract Capacity Set-Aside. Applications may be added to the Offer List until the applicable Contract Capacity Set-Aside is reached with respect to the aggregate of the proposed Contract Capacity of the Projects that are the subject of such Applications. Subject to the OPA’s discretion whether to add an Application to the Offer List where such addition would cause the applicable Contract Capacity Set-Aside to be exceeded, no Applications will be added to the Offer List where such addition would cause the applicable Contract Capacity Set-Aside to be exceeded.
- (b) If an Offer Notice is issued in respect of any such Application, the OPA shall designate such Project described in the Application to be a Contract Capacity Set-Aside Project, subject to entry into the FIT Contract, and shall so indicate on the corresponding Offer Notice by checking the box next to “Contract Capacity

Set-Aside Project” on the FIT Contract Cover Page forming part of such Offer Notice.

- (c) In respect of each of the first Application Period for Small FIT Projects and the first Application Period for Large FIT Projects, the OPA shall apportion the Aboriginal CCSA as follows:
 - (i) the First Nation CCSA shall be equal to two thirds of the MWs allocated to the Aboriginal CCSA and shall be reserved for First Nation CCSA Projects; and
 - (ii) the Métis CCSA shall be equal to one third of the MWs allocated to the Aboriginal CCSA and shall be reserved for Métis CCSA Projects.
- (d) If the First Nation CCSA in respect of the first Application Period for Small FIT Projects or the First Nation CCSA in respect of the first Application Period for Large FIT Projects, as the case may be, is not fully allocated for the applicable Application Period, the remainder of such First Nation CCSA that is not allocated may be allocated to the Métis CCSA in respect of such applicable Application Period.
- (e) If the Métis CCSA in respect of the first Application Period for Small FIT Projects or the Métis CCSA in respect of the first Application Period for Large FIT Projects, as the case may be, is not fully allocated for the applicable Application Period, the remainder of such Métis CCSA that is not allocated may be allocated to the First Nation CCSA in respect of such applicable Application Period.
- (f) For each of the first Application Period for Small FIT Projects and the first Application Period for Large FIT Projects, and only for Applications for CCSA Eligible Projects in respect of the First Nation CCSA or the Métis CCSA, as the case may be, an Application (in this paragraph the “**Subject Application**”) will not be added to the Offer List:
 - (i) where such Subject Application has an Aboriginal Participant in common with another Application that has already been added to the Offer List unless and until;
 - (ii) every other Application that has no Aboriginal Participants in common with such Subject Application:
 - (A) is added to the Offer List;
 - (B) has failed the TAT or if applicable the DAT; or
 - (C) would have been added to the Offer List had it not had an Aboriginal Participant in common with another Application and was ineligible for the Offer List as a result of Section 7.6(c)(i);

in which case such Applications that have not been added to the Offer List and that have not failed the TAT or if applicable the DAT shall be

assessed in order of rank regardless of the identity of their Aboriginal Participants, subject to the provisions of Sections 7.6(a) to (e).

7.7 Procurement Targets

Procurement Targets shall apply with respect to an Application Period and the Procurement Target will establish the maximum amount of MWs that will be procured during an Application Period. Offer Notices may be issued for Applications until the applicable Procurement Target is reached with respect to the aggregate of the proposed Contract Capacity of the Projects that are the subject of such Applications. Subject to the OPA's discretion whether to issue any Offer Notice in respect of a Project that would cause the applicable Procurement Target to be exceeded, no Offer Notices will be issued for Projects that exceed the Procurement Target.

SECTION 8 – FIT CONTRACT OFFER AND ACCEPTANCE

8.1 Offer List

Following the assessments described in Section 7, the OPA shall post on the Website a list (the “**Offer List**”) of all Applications received during an Application Period in respect of which Offer Notices are to be issued. The OPA shall further post on the Website a list (the “**Amended Site List**”) of all Applications received during an Application Period in respect of which the provisions of Section 8.2(b) shall apply. Applicants whose Applications appear on the Amended Site List shall be provided information by the OPA of the reduction in the dimensions of the requested provincial Crown lands available for these Applications, as determined by the MNR. Applications not appearing on the Offer List or Amended Site List shall be Terminated and not be the subject of Offer Notices.

8.2 Offer Notice

- (a) In accordance with Section 8.1, for an Applicant whose Application appears on the Offer List, the OPA will provide notice (the “**Offer Notice**”) to the Applicant in respect of such Project in which the OPA will offer a FIT Contract in its most recent standardized form on the basis of the information set out in the Application and whether such Application has been determined by the OPA to be a Contract Capacity Set-Aside Project pursuant to Section 7.6. The Contract Price and Price Adder (if applicable) shall be established in accordance with Section 9.1(b).
- (b) In accordance with Section 8.1, for an Applicant whose Application appears on the Amended Site List, the Applicant may, within 20 Business Days of the publication of the Amended Site List, elect by way of Notice to the OPA in the Prescribed Form:
 - (i) to amend its Application to revise the dimensions of the Site to conform with the available provincial Crown lands as notified to the Applicant by the OPA and, where necessary as a consequence of such revision, reduce the Contract Capacity, as well as any other necessary consequential change, provided that without limitation, the following will not be considered consequential changes:

- (A) the proposed Connection Point;
 - (B) any aspect of the Application that would affect the Project's Participation Level or its status as a Contract Capacity Set-Aside Project or as a CCSA Eligible Project;
 - (C) any aspect of the Application that would affect the number of Priority Points awarded to the Application;
 - (D) any aspect of the Application regarding the identity or nature of the Applicant;
 - (E) any addition to the provincial Crown land area of the Site; and
 - (F) any aspect of the Application that modifies the address or contact details of the Applicant; or
- (ii) to Terminate its Application.
- (c) If the Applicant elects to amend its Application as set out in Section 8.2(b)(i), it shall submit the amended Application and any necessary accompanying documentation as required by the FIT Rules. The OPA shall review the amended Application for eligibility and completeness in the same manner as if it were a newly submitted Application in accordance with these Rules, and if such amended Application is found by the OPA to be eligible and complete, the OPA will issue an Offer Notice to the Applicant in respect of the amended Application, as set out in Section 8.2(a). If the Applicant fails to make its election within 20 Business Days of the publication of the Amended Site List, elects to Terminate its Application, or if the OPA determines that the amended Application is not eligible or complete, the Application shall be Terminated and not be the subject of an Offer Notice.
- (d) An Applicant will have 20 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.
- (e) Upon receipt of the executed FIT Contract and the Completion and Performance Security, the OPA will return the Application Security to the Supplier (or in the case of a letter of credit, otherwise cancel such letter of credit) within 15 Business Days. For greater certainty, the Application Security may not be converted into Completion and Performance Security.
- (f) If the OPA does not receive:
- (i) the executed FIT Contract and Completion and Performance Security; or
 - (ii) a notice as described in Section 9.1(c);

from the Applicant within 20 Business Days of the Offer Notice, the Application shall be deemed to have been withdrawn and the Offer Notice shall be revoked. In this case, the OPA shall be entitled to draw on and retain for its own account the full amount of the Application Security as liquidated damages and not as a penalty.

(g) In the case of an Application relating to a Project:

- (i) whose Site is located in whole or in part on provincial Crown lands;
- (ii) that has had its Site reduced in size in accordance with Section 8.1; and
- (iii) that is Terminated in accordance with Section 8.2(b)(ii),

the OPA shall return the Application Security to the Applicant (or in the case of a letter of credit, otherwise cancel such letter of credit).

- (h) For Applicants that did not receive an Offer Notice in respect of a Project that was the subject of an Application submitted during an Application Period, the Application will be Terminated.
- (i) An Applicant that did not receive an Offer Notice in respect of a Project that was the subject of an Application submitted during an Application Period may submit a new Application in respect of such Project, or any other Project, during a subsequent Application Period in accordance with the FIT Rules.

8.3 **Form of FIT Contract**

The form of the FIT Contract will be as published on the Website from time to time at the OPA's discretion.

8.4 **Domestic Content**

- (a) The FIT Contract will require that Facilities utilizing On-Shore Wind, or Facilities utilizing Solar (PV) (Rooftop) or Solar (PV) (Non-Rooftop), 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 On-Shore Wind Facilities, the Minimum Required Domestic Content Level is 50%.
 - (ii) For Solar (PV) Facilities, the Minimum Required Domestic Content Level is 60%.
- (b) The Domestic Content Level of a Facility will be calculated in accordance with the methodology set out in Exhibit C to the FIT Contract. If a Facility does not meet the Minimum Required Domestic Content Level, the Supplier will be in default under the FIT Contract.

- (c) The OPA may from time to time add new “Domestic Content Grids” to Exhibit C of the FIT Contract that will expand the options for a Supplier to achieve its Minimum Required Domestic Content Level. Any contract offered in accordance with Section 8.2(a) will contain the most up-to-date version of Exhibit C. For greater certainty, (i) the development of new “Domestic Content Grids” and the updating of Exhibit C 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 11.

8.5 Solar Rooftop Project Portfolio MCO Extension

An Applicant that has entered into two or more FIT Contracts that qualify as a Rooftop Portfolio will have the option to extend the Milestone Date for Commercial Operation to 36 months following each Contract Date, as provided in the FIT Contract.

8.6 Resolving Inconsistencies

For greater certainty, to the extent that there is any inconsistency between these FIT Rules and the FIT Contract, the FIT Contract shall prevail.

SECTION 9 – CONTRACT PRICING

9.1 Price Schedule

- (a) The FIT Program establishes long-term pricing for Hourly Delivered Electricity from Projects. The OPA will post the Price Schedule for the FIT Program on the Website, and will revise it in accordance with Section 11.1. Any revisions shall not affect FIT Contracts previously executed. The price applicable in respect of a FIT Contract shall be the price as posted on the date of publication of the Offer List that contains the Application corresponding to such FIT Contract.
- (b) The Contract Price and Price Adder (if applicable) incorporated into the FIT Contract that will be offered to Applicants whose Applications have been accepted will be the applicable Contract Price and Price Adder (if applicable) as set out in the Offer Notice. In addition, the Price Adder incorporated into a FIT Contract in respect of an Aboriginal Participation Project or a Community Participation Project will be the Price Adder taking into account the Community Participation Level or Aboriginal Participation Level. In the event that the Participation Level changes following the Contract Date, the Contract Price and Price Adder will be adjusted in accordance with the FIT Contract.
- (c) Where the Contract Price or Price Adder (if applicable) set out in the Offer Notice is less than the published Contract Price or Price Adder (if applicable) in effect as at the date of the Application, the Applicant may by notice to the OPA elect not to enter into a FIT Contract, in which case the OPA shall return the Application Security to the Applicant (or in the case of Application Security in the form of a letter of credit, otherwise cancel such letter of credit).
- (d) Projects that use Renewable Biomass, Biogas, 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 9, 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.

9.2 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, following the Commercial Operation Date, a 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.

9.3 Other Factors

The OPA, or LDC in the case of a Facility that is not a Registered Facility and is connected to a Distribution System, 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 Facility. For greater certainty, Applicants are solely responsible for ensuring compliance with “Debt Retirement Charge” requirements under O Reg 493/01 and 494/01 made under the *Electricity Act*.

SECTION 10 – OVERVIEW OF SETTLEMENT

10.1 Settlement for IESO Market Participants

In the case of a Facility that:

- (a) is directly connected to the IESO-Controlled Grid; or
- (b) is otherwise a Registered Facility;

the payments to the Supplier under the FIT Contract shall be subject to the following:

- (c) the payment 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 payments made in accordance with the IESO Market Rules; and
- (d) 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.

10.2 Settlement for Non-IESO Market Participants

- (a) In the case of a Facility that is not a Registered Facility and is connected to a Distribution System, the Supplier will be paid 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 proposed Contract Capacity greater than 5 MW, that is not a Registered 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.

10.3 **Alternate Settlement Arrangements**

The OPA reserves the right at its 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 11 – PROGRAM REVIEW AND AMENDMENTS

11.1 **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 intervals (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 determined by the OPA in its discretion.
- (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.

SECTION 12 – 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, Contract Capacity, location, date, status within the FIT Program and name of Applicant, and whether the Project is a CCSA Eligible Project, Community Participation Project, Aboriginal Participation Project or an Education or Health Participation Project, may be disclosed by the OPA on the Website or otherwise, and such disclosure may be made on an individual basis, or as 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 MNR), and other advisers retained for the purpose of administration of the FIT Program.

SECTION 13 – ADDITIONAL RULES

13.1 Assignment and Change of Control

- (a) Subject to Section 5.2(e)(iii)(C), an Applicant shall not assign its Application to another Person (including by way of amalgamation or by operation of law).
- (b) An Applicant may not be the subject of a change of Control (including by way of amalgamation or by operation of law).
- (c) If an Applicant violates any provision of this Section 13.1, the OPA shall be entitled to Terminate the Application and draw on the full amount of the Application Security as liquidated damages and not as a penalty.

13.2 Project Splitting

Proposed renewable generating facilities 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, or obtaining any other benefit under the FIT Program. If the OPA determines in its discretion that a proposed renewable generating facility has been divided into smaller Projects, it may (i) Terminate 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 proposed renewable generating

facility has been divided into smaller Projects, the OPA may consider factors including 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.

13.3 General

- (a) The OPA shall not be obligated in any manner whatsoever, or have any liability, to any Person who is an Applicant or potential Applicant unless and until a FIT Contract is executed with such Person, and only in accordance with the terms of such FIT Contract, save and except as expressly set out in these FIT Rules.
- (b) At no time may an Applicant amend any portion of the Application, except the “Contact Details” portion of the Application Form, subject to a request by the OPA under Section 4.2(a) or Section 8.2(b).
- (c) During and following an Application Period, an Applicant may withdraw an Application that has not been Terminated by the OPA no later than the earlier of:
 - (i) 60 days following the Application End Time applicable to the Application; and
 - (ii) the date specified in a notice posted on the Website after which Applications submitted during such Application Period may no longer be withdrawn,

and in which case, the OPA shall return the Application Security to the Applicant (or in the case of a letter of credit, otherwise cancel such letter of credit). For clarity, the Application Fee will not be returned in such circumstances.

- (d) 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 Termination of any or all Applications for any reason or in the event of the cancellation or suspension of the FIT Program or any part thereof 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 costs in relation to satisfying the Project eligibility criteria described in Section 2, the Application completeness criteria described in Section 3, the Application Fee and any costs associated with delivering the Application Security.
- (e) Notwithstanding anything contained in these FIT Rules, the OPA reserves the right, in its discretion, to Terminate 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.
- (f) Notwithstanding any other provision in these FIT Rules, the OPA shall be entitled to draw on and retain for its own account, as liquidated damages and not as a penalty, the full amount of the Application Security in the following circumstances:

- (i) where an Applicant (other than an Applicant who is a Natural Person) is no longer legally capable of executing a FIT Contract, including by reason of dissolution, winding-up, insolvency or bankruptcy, and has no successors or assigns as permitted herein. In the event that an Applicant who is a Natural Person becomes legally incapable or deceased prior of executing a FIT Contract, the Application Security shall be returned to the Applicant or the Applicant's estate, as the case may be (or in the case of a letter of credit, otherwise cancelled);
 - (ii) where the OPA Terminates an Application due to material misrepresentation by the Applicant, a material omission which makes information submitted by the Applicant materially misleading or inaccurate, or any material non-compliance with the FIT Rules by the Applicant; or
 - (iii) in the circumstances described in Section 8.2(f), and Section 13.1(c).
- (g) 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 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 to all Applicants (or in the case of a letter of credit, otherwise cancel such letter of credit).
- (h) 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 Project, whether or not an Application is accepted or Terminated or the FIT Program is suspended, revoked, amended or revised. Under no circumstances whatsoever shall the OPA be liable for any claims for compensation or damages, including any indirect, punitive or consequential damages associated with the Applicant's submission of an Application or participation in the FIT Program except for the return of (or in the case of a letter of credit, cancellation of) Application Security or Application Fees as expressly provided in these FIT Rules.
- (i) The OPA may verify with any Applicant or with any third party any information set out in an Application.
- (j) 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 (or in the case of a letter of credit, the cancellation thereof).
- (k) The OPA shall not be liable for any delays in processing, reviewing, accepting or Terminating an Application or providing an Offer Notice in respect thereof.
- (l) The OPA reserves the right, in its discretion, to waive any informality, irregularity or non-compliance with respect to an Application or an Applicant's compliance with these FIT Rules, including by extending any deadline set out in

these FIT Rules, which for clarify may be any deadline affecting the OPA or the Applicant.

- (m) The acceptance by the OPA of an Application or the issuance of an Offer Notice by the OPA to an Applicant shall not be construed as:
 - (i) evidence that the OPA has accepted the authenticity or sufficiency of the Application and its supporting documentation; or
 - (ii) a waiver of or bar to any of the OPA's rights under these FIT Rules or otherwise.
- (n) 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 Claim, losses, damages, liabilities, penalties, obligations, payments, costs and 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, including the right to exercise its discretion hereunder. In submitting an Application, each Applicant agrees that it waives any rights it may have to bring a Claim or otherwise as against the OPA for failing to issue the Applicant an Offer Notice or issuing an Offer Notice to another Applicant.
- (o) In submitting an Application, each Applicant shall agree that, in no circumstances shall it be entitled to recover any damages as against the OPA in an amount greater than the Application Fee, whether such claim for damages arises in contract, warranty, equity, negligence, intended conduct, detrimental reliance or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the OPA, and including any claim by the Applicant that the OPA has failed to comply with these FIT Rules.
- (p) 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.
- (q) 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.

13.4 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. Any reference to the OPA's discretion in these FIT Rules shall mean the OPA's sole and absolute discretion.
- (d) **Extensions of time.** The OPA may extend the time to meet the requirements of these FIT Rules at its sole and absolute discretion. Any such extension of time shall only be valid and binding on the OPA if provided in writing by an authorized representative of the OPA. Any failure to meet the revised time requirement shall have the same consequences as if the original time requirement had not been met.
- (e) **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.
- (f) **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.
- (g) **Liquidated Damages.** By submitting an Application, Applicants acknowledge and agree that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the OPA and Ontario rate-payers as result of an Applicant 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 failure to execute a FIT Contract in response to an Offer Notice, and does not constitute a penalty.
- (h) **No Strict Construction.** Despite the fact that these FIT Rules were drafted by the OPA's legal and other professional advisors, Applicants submitting Applications acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision in these FIT Rules shall not be construed against the OPA in favour of the Applicant when interpreting such term or provision, by virtue of such fact.
- (i) **Notice.** No person may provide any notices or otherwise communicate with the OPA in respect of an Application other than the Primary Contact or Secondary Contact, provided that a duly authorized signatory of the Applicant may enter into a FIT Contract that is the subject of an Offer Notice, if any, in relation to such Application.
- (j) **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.

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

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