

ONTARIO POWER AUTHORITY

VENDOR LIST CATALOGUE

LISTING AGREEMENT

You are about to submit to the Ontario Power Authority (“**OPA**”) your final Application for inclusion on the Vendor List for the provision of renewable energy technology (“**RET**”) products and services.

In order to have obtained a user name and password to the Vendor List Application Website, you were required to read and agree to an initial set of terms and conditions (the “**Application Agreement**”). The terms and conditions set out below (the “**Listing Agreement**”), along with the Application Agreement to which you have already agreed (together, the “**Vendor List Agreements**”), govern the participation by each Applicant that successfully applies to be listed on the Vendor List (each such successful Applicant that accepts the Listing Agreement, a “**Listed Vendor**”), and participation with, and access to, the Vendor List. The terms and conditions of this Listing Agreement apply in addition to, and do not replace, the terms and conditions of the Application Agreement. Should any potential conflict arise between the terms of the Application Agreement and this Listing Agreement, both agreements will be interpreted in such a way as to avoid conflict as much as reasonably possible. Should any such conflict be unable to be resolved, the terms of this Listing Agreement will prevail.

If you wish to submit your Application and agree to the terms of the Vendor List Agreements, click on “**I AGREE**”, and your Application will be forwarded to the OPA for processing. If you do not agree to this Listing Agreement, click on “**I DO NOT AGREE**”, in which case your Application will not be submitted. Please note the terms of the Application Agreement will continue to apply to your registration for and use of the Vendor List Application Website even if you click on “**I DO NOT AGREE**”. By clicking on “**I AGREE**”, you represent and warrant that you have the authority to bind the Applicant.

In this Listing Agreement: (a) the terms “**you**” and “**your**” means both registered users of the Vendor List Websites on behalf of an Applicant or Listed Vendor and the Applicant or Listed Vendor, as the context requires; (b) “**Vendor List Catalogue**” means the website administered by the OPA through which the Vendor List is made available to Project Owners; (c) “**Vendor List Websites**” means either or both of the Vendor List Application Website and the Vendor List Catalogue, as the context requires; (d) “**Host Ministries**” means the Ministry of Education and the Ministry of Municipal Affairs and Housing; (e) “**Project Owner**” means school boards and social housing municipal service managers that receive stimulus funding under the Government of Ontario RET stimulus funding program; (f) “**Application**” means an application to be listed on the Vendor List, including all attachments required to be submitted as part of such application; and (g) “**Vendor Information**” means information provided as part of your Application, including, without limitation all Supplementary Documents (as defined under the heading “Supplementary Documents”).

PURPOSE OF THE VENDOR LIST

The purpose of the Vendor List Catalogue is to provide Project Owners with access to a list of Listed Vendors that are interested in having the opportunity to bid to provide RET products or services to Project Owners. Project Owners may, in their discretion, use the Vendor List to invite one or more of the Listed Vendors to participate in the Project Owners’ independent procurement process for the RET products or services that they are interested in purchasing. The Vendor List is not connected in any way to any other OPA program or initiative, including the FIT program or the microFIT program.

The OPA will administer the Vendor List Catalogue, on behalf of the Ministry of Energy, to provide information about Listed Vendors to the Project Owners. The Vendor List will be made available in the form of a secure, online catalogue that will list all of the Listed Vendors according to RET category and service type. The information made available on the Vendor List will be based on the information that was submitted by Applicants in their Application, as updated by Listed Vendors in accordance with this Listing

Agreement. Each Listed Vendor will have full access to all information made available on the Vendor List about every other Listed Vendor.

VENDOR SELECTION BY PROJECT OWNERS

Project Owners planning to implement RET projects may, in their discretion, use the Vendor List to invite one or more of the Listed Vendors to participate in the Project Owners' independent procurement process for the RET products or services that they are interested in purchasing. The procurement processes followed by the Project Owners, including, without limitation, all decisions of a Project Owner regarding whether or not to: (a) invite one or more Listed Vendors to participate in the Project Owners' procurement process; and (b) select and enter into agreements with one or more Listed Vendors to provide products or services to such Project Owner, will be made independently by the Project Owner, in its discretion. These procurement processes are completely independent of the OPA, and the OPA will have no involvement and exert no influence over Project Owners in connection with such independent procurement processes. In no way will the OPA be considered a party to any Project Owner procurement process or to any eventual contract between a Project Owner and a Listed Vendor.

Complaints and disputes arising out of Project Owner projects or procurement solicitations may not be raised with the OPA. The OPA will not respond to any complaint or dispute relating to Project Owners and their projects or procurement solicitations.

APPLICATION REVIEW PROCESS

If you agree to this Listing Agreement, your Application will be forwarded to the OPA. Once your Application is received by the OPA, the OPA will send you an email to the address provided in your Application confirming receipt of your Application.

Once an Application is submitted, the Applicant will not be able to make changes to its Application. Following the submission of an Application, the OPA may, in its discretion, notify an Applicant of errors in its Application and may provide the Applicant with an opportunity to correct such errors within a prescribed period of time. The OPA has no obligation to notify an Applicant of any such errors and will have no liability to any Applicant for its failure to do so.

The OPA will notify Applicants of whether or not their Application to be part of the Vendor List is successful through the "My RET Vendor Messaging Centre", unless otherwise specified at Application submission. The OPA will have no liability for any mistakes or omissions with respect to notifications sent to Listed Vendors or unsuccessful Applicants.

Listed Vendors are responsible for verifying that they are included on the Vendor List, that they are included in the appropriate categories and that their Vendor Information is complete and accurate. The OPA is not responsible for missed opportunities arising out of any failure of the OPA to include a Listed Vendor on the Vendor List, any failure to include a Listed Vendor in the appropriate categories or for any errors or omissions in the Vendor Information included on the Vendor List.

WITHDRAWAL OF APPLICATION OR FROM VENDOR LIST

You may request to have your Application withdrawn from consideration for the Vendor List. In addition, Listed Vendors may request to be removed from the Vendor List. To withdraw your Application or remove yourself from the Vendor List, contact the OPA by providing written notice pursuant to the "OPA CONTACT" section below. The OPA will endeavour to grant any removal or withdrawal requests within 30 days of receiving a written request, but may require more time to do so.

OPA TERMINATION/REMOVAL RIGHTS

The OPA may, in its discretion:

- (a) remove an Applicant from consideration for the Vendor List; or
- (b) deny or terminate a Listed Vendor's access to or use of the Vendor List Websites,

at any time and without notice, including, without limitation, for breach by the Listed Vendor of the Vendor List Agreements, if the OPA is required to do so by a Host Ministry or by the Ministry of Energy, or for any other reason provided in the Vendor List Agreements.

The OPA, in its discretion, may move, alter, sell, assign, transfer, shut down or disable access to any or all parts of the Vendor List Websites, at any time and without notice, including, without limitation, if the OPA is required to do so by a Host Ministry or by the Ministry of Energy.

SUPPLEMENTARY DOCUMENTS

As part of your Application, you were required to attach several additional documents from the Vendor List Application Website (the "**Supplementary Documents**"). It is your responsibility to ensure that the Supplementary Documents attached are complete and accurate and provided in the required form. If any of the required Supplemental Documents are not properly provided, the OPA may reject your Application for inclusion on the Vendor List.

Without limiting the preceding paragraph, your Application may be considered incomplete and ineligible for inclusion on the Vendor List without the following Supplementary Documents:

- Tax Compliance Declaration Form or Tax Questionnaire.
- Certificate of insurance confirming commercial general liability insurance for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$2,000,000 with an A.M. Best Rating of B+ or better;
- Confirmation of satisfactory Workers Safety and Insurance Board (WSIB) status, which can consist of:
 - a WSIB clearance certificate;
 - a declaration that the Applicant is an independent operator without employees; or
 - an explanation why the above two options do not apply.

Certain Supplementary Documents are, or contain, declarations. The onus is solely on you to conduct all investigations and verifications necessary to confirm that each of the statements set out in the declarations can be made.

APPLICANT WARRANTY REGARDING VENDOR INFORMATION

You acknowledge and agree that you are solely responsible for the accuracy and content of all Vendor Information. You represent, warrant and covenant that all Vendor Information is complete and accurate, including declarations of compliance with required standards for products the Applicant has indicated that it can supply. You understand and acknowledge that the OPA will not assume responsibility to any person, including, without limitation, Project Owners, for any inaccuracy, error or incompleteness in your Vendor Information, and you agree to defend, indemnify and hold harmless the OPA, the Crown in Right of Ontario, and their respective officers, directors, representatives, ministers, employees, contractors and agents from and against any claim, suit, action, or proceeding, threatened or actual, arising out of or relating to your Vendor Information or your participation as a Listed Vendor.

The OPA reserves the right to refuse to post or to remove any Vendor Information, in whole or in part, that, in its discretion, is unlawful, misleading, unacceptable, undesirable, inappropriate or otherwise objectionable.

USE AND DISCLOSURE OF VENDOR INFORMATION

You understand and agree that, with the exception of Vendor Information that is expressly identified as confidential on the Vendor List Application Website, your Vendor Information may be made available to any and all visitors to and users of the Vendor List Websites, including, without limitation, Project Owners and other Listed Vendors. You further understand and agree that the OPA may use, copy and disclose all Vendor Information (including, without limitation, Vendor Information that is expressly identified as confidential on the Vendor List Application Website) as required in connection with the processing of Applications and the operation of the Vendor List Websites, which use and disclosure may include, without limitation, disclosure to the Host Ministries or the Ministry of Energy.

You also understand and agree that the Host Ministries and the Ministry of Energy may use the Vendor Information in connection with the performance of research and analysis relating to green energy industry and other economic development initiatives.

All Vendor Information is subject to the access provisions under the *Freedom of Information and Protection of Privacy Act* (Ontario) ("**FOIPPA**"), which provides all persons with legal rights of access to information subject to a limited set of exemptions. You acknowledge and agree that your Vendor Information may be made available to third parties pursuant to FOIPPA, and that the identification of any Vendor Information provided as proprietary or confidential does not guarantee that the OPA will not be required to make such information available under FOIPPA.

PRIVACY

You acknowledge that some of the Vendor Information may include personal information. While name, title and business contact information of individuals entering into a business relationship with the OPA do not constitute personal information, certain other information about individuals may be personal information as defined in the Freedom of Information and Protection of Privacy Act (Ontario). The OPA's Privacy Policy is available at www.powerauthority.on.ca/Page.asp?PageID=325 and its terms are incorporated in the Vendor List Agreements. You acknowledge the notice to you of the collection, use and disclosure of such personal information by the OPA and agree that the purposes for such collection, use and disclosure are reasonable. You consent to the collection, use and disclosure of any personal information by the OPA: (a) in accordance with the terms of the OPA Privacy Policy; and (b) as set forth above under the heading "Use and Disclosure of Vendor Information".

OBLIGATION TO MAINTAIN VENDOR INFORMATION

Listed Vendors will contact the OPA, pursuant to the "OPA CONTACT" section below, to edit or update their Vendor Information that forms part of the Vendor List. Further, you agree that if you become a Listed Vendor, you will maintain the status shown in the Supplementary Documents with respect to company taxes, insurance requirements, WSIB compliance, product, component and service certification for manufacturing, performance, safety and installation for as long as you remain a Listed Vendor.

ACKNOWLEDGEMENT OF LIMITED OPA ROLE

The OPA will not make any qualitative determination with respect to an Applicant's ability to deliver RET products and services. Further, the OPA will not verify the accuracy of the Vendor Information submitted at the time of Application submission, nor will the OPA continually monitor the Vendor Information for continued accuracy and completeness. The OPA will objectively review the Applications only to the extent required to confirm that the Application is complete and that the correct Supplementary Documents have

been provided and that they provide the necessary evidence. Notwithstanding the foregoing, the OPA may, in its sole discretion, decide to verify any information submitted by an Applicant, such as an Applicant's provincial tax status with the Ontario Ministry of Revenue.

The OPA will not be taking part in the procurement of Listed Vendors from the Vendor List by the Project Owners.

GRANT AND RESTRICTIONS ON USE

All information, including, without limitation, all text, design, graphics, drawings, photographs, advertisements, video clips, music and sounds, and all trade-marks, service marks and trade names and the selection and arrangements thereof (collectively the "**Content**") forming part of the Vendor List Websites are, unless otherwise noted, subject to intellectual property rights including copyrights and trade-marks held by or licensed by the OPA. No licence to use, copy, distribute, republish, transmit or otherwise exploit any Content is given to you and all intellectual property rights in and to the Content are expressly reserved to the OPA.

THIRD PARTY LINKS

The Vendor List Websites may contain links to third party websites that are not owned or controlled by the OPA, including websites of Listed Vendors and Project Owners. The OPA has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, the OPA will not and cannot censor or edit the content of any third-party site.

VENDOR LIST REPRESENTATIONS

The OPA does not endorse any Listed Vendor. As a Listed Vendor, you may not represent, attest to or advertise any form of relationship (contractual or otherwise), partnership, endorsement or co-operation between your organization and the OPA, the Ministry of Energy, or the Host Ministries. Applicants and Listed Vendors must not state or represent, verbally or in writing, to any person that application for or inclusion on the Vendor List in any way implies that the Applicant or Listed Vendor (or their products or services) satisfy the FIT or microFIT domestic content criteria or that the Applicant or Listed Vendor (or their products or services) are in any way approved or endorsed by the OPA or the Government of Ontario.

Listed Vendors are only permitted to make the following representation with respect to the Vendor List:

[Listed Vendor] is on a list of renewable energy technology vendors that are eligible to provide renewable energy products and services to school boards and social housing managers pursuant to an Ontario government funding initiative.

DISCLAIMER OF WARRANTIES

THE VENDOR LIST WEBSITES (INCLUDING, WITHOUT LIMITATION, ALL MATERIALS, INFORMATION AND SERVICES PROVIDED AS PART OF THE VENDOR LIST WEBSITES) ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER TERMS OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE OPA DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND OTHER TERMS, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT), INCLUDING THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

Without limiting the generality of the preceding paragraph, the OPA does not provide any representations, warranties or conditions that the Vendor List Websites will be available or that they will operate without errors. The OPA will not be liable if, for any reason, the Vendor List Websites are unavailable or operating with errors or in a degraded fashion at any time or for any period. In particular, and without limitation, the OPA will not be responsible for any missed deadlines by Applicants, for any loss of priority in the consideration of Applications or for any lost business opportunity for a Listed Vendor attributable to any lack of availability, errors or degradation in the Vendor List Websites.

In addition to the foregoing, the OPA does not represent, warrant or covenant that an Applicant will be accepted as a Listed Vendor, that any Listed Vendor will be contacted or have the opportunity to sell RET to any Project Owner that accesses the Vendor List, or that a Listed Vendor will receive any value or volume of business through its inclusion on the Vendor List. Further, the OPA does not represent, warrant or covenant that any Listed Vendor's products or services, or that any project using a Listed Vendor's products or services, will qualify for feed-in tariff ("FIT") programs or contracts.

LIMITATION OF LIABILITY

Neither the OPA nor the Crown in Right of Ontario will have any liability, whether in contract, tort, breach of statutory duty, strict liability, negligence, gross negligence or otherwise, arising out of or relating to the Vendor List Agreements, the processing of Applications or the operation of the Vendor List Websites. Without limiting the foregoing, neither the OPA nor the Crown in Right of Ontario will have any liability for direct, indirect, consequential, special or punitive damages or for any loss of profit, loss of revenue, loss of business opportunity or loss of data.

INDEMNITY

Without limiting any other terms or conditions of the Vendor List Agreements, you agree to defend, indemnify and hold harmless the OPA and its officers, directors, employees, contractors, agents and the Crown in Right of Ontario from and against any claim, suit, action, or proceeding, threatened or actual, arising out of or relating to: (a) your breach of any provision of the Vendor List Agreements; (b) your use of the Vendor List Websites; or (c) your participation as a Listed Vendor.

Without limiting any other terms or conditions of the Vendor List Agreements, you agree to defend, indemnify and hold harmless the OPA, the Crown in Right of Ontario and their respective officers, directors, representatives, ministers, employees, contractors and agents from and against any claim, suit, action, or proceeding, threatened or actual, arising out of or relating to: (a) your breach of any provision of the Vendor List Agreements; (b) your use of the Vendor List Websites; or (c) your participation as an Applicant or Listed Vendor.

AMENDMENT

The OPA may amend the Vendor List Agreements at any time by providing you with notice of such amendment, which notice may be given by any means, including but not limited to posting on the Vendor List Websites or by electronic mail. It is your responsibility to check the Vendor List Websites on a regular basis to identify any amendments to the Vendor List Agreements. Continued use of the Vendor List Websites or participation on the Vendor List following any such amendments constitutes your agreement to the terms and conditions of the applicable Vendor List Agreements, as amended.

GOVERNING LAW AND ATTORNTMENT

The Vendor List Agreements are governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. ANY LEGAL ACTION OR PROCEEDING RELATING TO YOUR ACCESS TO, OR USE OF, THE WEBSITE OR THE VENDOR LIST AGREEMENTS WILL BE INSTITUTED ONLY IN A PROVINCIAL COURT LOCATED IN ONTARIO,

CANADA. YOU AGREE TO SUBMIT TO THE JURISDICTION OF, AND AGREE THAT VENUE IS PROPER IN, THESE COURTS IN ANY SUCH LEGAL ACTION OR PROCEEDING.

ARBITRATION

You agree that all disputes or disagreements between you and the OPA relating to the Vendor List Agreements, your Application, the use of the Vendor List Websites, or to any related matter will be settled by final and binding arbitration by a single arbitrator pursuant to the provisions of the *Arbitration Act*, 1991, S.O. 1991, c. 17 (Ontario). Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and enforcement, as the law of such jurisdiction may require or allow. The arbitration will take place in the City of Toronto, Ontario, Canada. There will be no discovery. The arbitrator will not limit, expand or modify the terms of this Application Agreement nor award damages in excess of compensatory damages permitted under this Application Agreement, and you waive any claim to such excess damages. The arbitrator will not have any ability to award any equitable remedies against the OPA. The arbitrator will not have the right to award any damages in excess of damages that could lawfully be awarded by a court of competent jurisdiction. The arbitrator will issue a written decision containing findings and conclusions on all significant issues. Each party will bear its own expenses and an equal share of all costs and fees of the arbitration. The content and result of any arbitration will be held in confidence by all participants, each of whom will be bound by an appropriate confidentiality agreement.

VENDOR LIST WEBSITE REPRESENTATIONS; ENTIRE AGREEMENT

The Vendor List Websites may contain additional guidelines, user guides, help documents or answers to frequently asked questions (“**FAQs**”) to assist Applicants in completing the Application or to assist users of the Vendor List. This information is provided for reference and illustrative purposes only and does not constitute any representation, warranty, covenant or condition on the part of the OPA or form part of the Vendor List Agreements. The Vendor List Agreements constitute the entire agreement between you and the OPA, and supersede and replace any prior, contemporaneous or subsequent representations, warranties, covenants or conditions made by or on behalf of the OPA, including any such terms found on the Vendor List Websites or the Vendor List.

GENERAL

If any part of the Vendor List Agreements is unlawful, void, or unenforceable, that part will be deemed severable and will not affect the validity or enforceability of any remaining provisions. The delay or omission by either party to enforce or exercise any terms or rights pursuant to the Vendor List Agreements will not impair any such term or right nor be construed to be a waiver thereof and will in no way affect the other party's right later to enforce it. Any waiver by either party of any covenants, conditions or agreements to be performed by the other party will not be construed to be a waiver of any succeeding breach thereof or any covenant, conditions or agreement herein contained.

OPA CONTACT

For any questions related to your Application, the Vendor List, the Vendor List Websites, to withdraw your Application be to considered for the Vendor List or to request removal from the Vendor List, please contact the OPA by selecting the “Contact Us” icon on the Vendor List Application Website:

<https://retvendorlist.powerauthority.on.ca/>

The OPA will not respond to any questions or concerns that do not relate to the Vendor List. The OPA is not responsible for and will not respond to complaints, questions, or other issues with respect to activities or procurements of Project Owners.