
PROJECT FEASIBILITY STUDY TERMS AND CONDITIONS

IMPORTANT: PLEASE CAREFULLY READ THE FOLLOWING PFS TERMS AND CONDITIONS. IF THE APPLICATION IS APPROVED BY THE IESO THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE PROJECT FEASIBILITY STUDY (PFS) IDENTIFIED IN THE PFS APPLICATION AND YOU AGREE TO COMPLY WITH AND BE BOUND BY THE TERMS AND CONDITIONS HEREIN.

Capitalized terms used in these PFS Terms and Conditions will have the meanings ascribed to them in Section 27 or as otherwise defined herein. The Program Requirements are incorporated by reference and form part of these PFS Terms and Conditions.

1. APPLICATION

If the PFS Application is approved by the IESO, the Participant agrees to complete a Project Feasibility Study report (the "**Report**") and submit the Report to the IESO and the Technical Reviewer for review and approval by the IESO. In order for a PFS Application to be approved, the Applicant and PFS Application must meet the Eligibility Criteria and PFS Minimum Requirements.

If the IESO approves the PFS Application, the IESO will notify the Participant in writing (the "**PFS Letter of Approval**"). The PFS Letter of Approval will include the PFS Funding Amount. If the PFS Application is not approved and the IESO does not issue an PFS Letter of Approval, these PFS Terms and Conditions will not take effect and the Applicant will not be eligible for any Participant Incentives. The IESO will communicate to the Applicant in writing if the PFS Application is not approved.

2. PROJECT FEASIBILITY STUDY REPORT

The Participant is responsible for completing the Report in accordance with the PFS Minimum Requirements. The Participant may consult with the IESO and the Technical Reviewer during preparation of the Report to ensure compliance with the PFS Minimum Requirements. If the Participant submits a Report that the IESO believes fails to meet the PFS Minimum Requirements, the IESO may allow the Participant a reasonable period of time to address deficiencies and to re-submit a Report to the IESO. If the Participant fails to address such deficiencies to the satisfaction of the IESO on or before the earlier of: (i) eight months from the date of the PFS Letter of Approval; and (ii) April 30, 2027; then unless otherwise agreed

to by the IESO, these PFS Terms and Conditions will terminate and the Participant will not be entitled to receive any PFS Funding Amount. The IESO will communicate to the Participant in writing if the Report is not approved.

3. PROJECT FEASIBILITY STUDY MINIMUM REQUIREMENTS

The Report must meet the PFS Minimum Requirements, and be signed by a qualified professional (Professional Engineer, Certified Energy Manager, Certified Engineering Technologist, or other as approved by the IESO) in good standing, who is not an employee of the Participant. The IESO, in its sole discretion, will determine whether the Report meets the PFS Minimum Requirements. Notwithstanding the foregoing, the Report must also include all other information reasonably requested and required by the IESO.

4. SUPPORTING DOCUMENTATION

Once the Participant has been notified that the Report has been approved by IESO, the Participant shall provide the IESO with all supporting receipts and invoices evidencing the costs incurred by the Participant to complete the Report. If the IESO disputes the receipts or invoices for any reason, the IESO will contact the Participant to provide an opportunity for the Participant to justify any disputed costs. The actual costs incurred will be deemed for all purposes to be such amount ultimately determined by the IESO.

The submission of the supporting documentation in Section 4 will be deemed to be a representation and warranty of the Participant to the IESO that: (a) the work required to be completed by the Participant has been completed in all material respects; and (b) the costs incurred by the Participant have been paid in accordance with the documentation provided.

5. TECHNICAL REVIEWER

The IESO reserves the right to engage a third-party service provider (including the Technical Reviewer), at any time, to exercise or perform any of the IESO's rights or obligations under these PFS Terms and Conditions, in full or in part. The IESO also reserves the right to, at any time, assume the role of the Technical Reviewer set out under these PFS Terms and Conditions. The Participant shall, and shall cause the owner(s) and/or occupier(s) of the Facility, to cooperate with the IESO and/or the Technical Reviewer and provide the IESO and/or the Technical Reviewer with any required data, reports, and information and access to the Facility in order for the IESO and/or the Technical Reviewer to perform the IESO's obligations under these PFS Terms and Conditions, including requiring clarification from the Participant when reviewing the Report.

6. PFS FUNDING AMOUNT AND PAYMENT

If the PFS Application is approved, the Participant is eligible to receive a Participant Incentive (referred to as a “**PFS Funding Amount**”) to cover 50% of the PFS Eligible Costs incurred by a Participant to complete the Report, subject to a maximum that is the lesser of: (a) \$100,000; or (b) 10% of the estimated Project Eligible Costs (as set out in the Report), unless otherwise approved by the IESO in its sole discretion.

Payment of the PFS Funding Amount shall be made upon receipt by the IESO of supporting documentation in accordance with Section 4, the sufficiency of which will be determined by the IESO. Payments will be made by electronic funds transfer or cheque payable to the Participant. Once payment is issued by the IESO to the Participant, it is the Participant's responsibility to ensure the funds are deposited or cashed. In addition to the PFS Funding Amount, the IESO will pay any Applicable Taxes on the PFS Funding Amount. The Participant will provide to the IESO sufficient supporting documentation, as requested by the IESO, to facilitate and support the IESO in claiming input tax credits in respect of the PFS Funding Amount.

7. PFS ELIGIBLE COSTS

The PFS Eligible Costs are as set out in Section 3.4 of Appendix 2 to the Program Requirements. Any costs incurred before the PFS Letter of Approval is issued are not considered to be a PFS Eligible Cost, unless otherwise approved by the IESO.

8. REPRESENTATIONS AND WARRANTIES

Throughout the term of these PFS Terms and Conditions, the Participant represents and warrants as follows:

- (a) the Participant reasonably expects that the Report will identify Measures that will generate Electricity Savings;
- (b) the Participant would not have undertaken the Report without the PFS Funding Amount;
- (c) the proposed Project meets the Eligibility Criteria;
- (d) the scope of the Report satisfies the PFS Minimum Requirements;
- (e) all of the information set out in the PFS Application is complete and accurate in all material respects;
- (f) the Participant has the requisite power, authority and capacity to enter into these PFS Terms and Conditions and to perform its obligations hereunder; and

- (g) the Participant has the authority to implement the proposed Project.

9. EVALUATION, MONITORING AND VERIFICATION; AUDIT

The Participant will, and will cause the owner(s) and occupier(s) of the Facility to:

- (a) cooperate with the IESO and their respective designates and make available such information in the form and with the frequency as may be reasonably requested, including but not limited to, historical electricity consumption;
- (b) keep complete and accurate books, accounts and records and all other data required for the purpose of proper administration and EM&V of the Report, for a period of seven years after the termination or expiry of these PFS Terms and Conditions;
- (c) on reasonable notice, at any time during normal business hours, provide reasonable access to the IESO and/or its respective designates to such books, accounts, records and other data and: (i) at the reasonable request of the IESO, make available to the IESO and/or their respective designates, the personnel of the Participant and its subcontractors involved in the PFS Application and Report and the maintenance of such books, accounts, records and data referred to above; and (ii) permit the IESO and/or their respective designates to examine and audit and take copies and extracts of such documents.

10. INDEMNIFICATION & LIMITATION OF LIABILITY

The Participant will indemnify, defend and hold the IESO, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective Affiliates, and each of the foregoing person's respective directors, officers, employees, shareholders, advisors, third party service providers and agents (including contractors and their employees, and for certainty includes any third party Technical Reviewer) (collectively, the "**Indemnified Party**") harmless from and against any and all claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any claim by, or occurrence or event related to, any third party relating to the Report, proposed Project and/or these PFS Terms and Conditions, including, without limitation, any claim by, or occurrence or event related to, the owner(s) and occupier(s) of the Facility; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such

claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or wilful misconduct of the Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party's negligence or wilful misconduct contributed to any indemnifiable loss.

11. FIPPA

The Participant acknowledges that all Confidential Information provided by the Participant to the IESO is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) as amended, the *Ontario Energy Board Act, 1998* (Ontario) as amended, and the *Electricity Act, 1998* (Ontario) as amended, and agrees to comply at all times with applicable privacy laws in connection with the collection and use of personal information.

12. CONFIDENTIALITY

The Participant and the IESO each agree that, each Party (each a "**Disclosing Party**" as the context requires) may, subject to the terms of this Agreement, disclose to the other party (each a "**Receiving Party**" as the context requires) certain information (including applications of that information) which is confidential to the Disclosing Party, and:

- (a) The term "Confidential Information" refers to all information, whether written or oral, that has been identified or marked as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with the XLerate Program. Confidential Information does not include, however, information that the Receiving Party is able to demonstrate to the Disclosing Party's satisfaction, acting reasonably:
 - (i) was or becomes generally known to the public other than by a breach of the Receiving Party or any of its Representatives of this Section 12;
 - (ii) as shown by written record, was specifically known by the Receiving Party prior to disclosure by the Disclosing Party hereunder and was not subject to any confidentiality obligation;
 - (iii) as shown by written record, was independently developed by the Receiving Party without use of or reference to the Confidential Information; or
 - (iv) was or becomes known to the Receiving Party on a non-confidential basis from a third party other than the Disclosing Party, so long as such source was not subject to any confidentiality obligation.

- (b) All Confidential Information remains, at all times, the exclusive property of the Disclosing Party. Neither the Receiving Party nor any of its Representatives has any licence or other right to use or disclose any Confidential Information for any purpose whatsoever other than to use the Confidential Information in connection with the XLerate Program, or as otherwise agreed to in these PFS Terms and Conditions.
- (c) The Receiving Party agrees, with respect to the Disclosing Party's Confidential Information to hold the Confidential Information secure and in confidence using the same degree of care and security to safeguard such Confidential Information as it uses to protect its own information of like character, but in no event less than a reasonable degree of care and security.
- (d) The Receiving Party will inform its Representatives to whom it may be permitted to disclose or provide any such Confidential Information hereunder of the confidential nature of the Confidential Information and will cause such Representatives to comply with the provisions of this Section 12. The Receiving Party will be responsible for any breaches of this Section 12 by any of its Representatives, as if such Representatives were a Party to these Terms and Conditions.
- (e) If the Receiving Party or any of its Representatives are required by law, or are required or requested in any judicial or administrative proceeding or by any Governmental Authority, to disclose any Confidential Information, the Receiving Party will, and will cause its Representatives, to the extent legally permissible, to:
 - (i) provide prompt notice of the existence, terms and circumstances of such requirement or request to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order or waive compliance with the terms of Section 12;
 - (ii) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow such requirement or request; and
 - (iii) disclose, if disclosure of such information is required, only such information as is required by law and use the Receiving Party's best efforts, and cause its Representatives to use their best efforts, to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information as the Disclosing Party designates.
- (f) The Receiving Party acknowledges that an award of damages may not be an effective or adequate remedy in the event of a breach by the Receiving Party of this Section 12. Accordingly, the Disclosing Party will be entitled to seek equitable relief, including injunction and specific performance, or any other remedy in law, in the event of any breach or threatened breach by the Receiving Party of this Section 12.

- (g) Without limiting the terms of this Section 12, the Participant consents to the collection, use and disclosure by the IESO of:
 - (i) its name, its contact information, and its participation in the XLerate Program;
 - (ii) data relating to the XLerate Program, including a description of any Measure or Project, the type and location of the Facility, and historical energy usage and consumption; and
 - (iii) any Project features and equipment (unless the Participant, acting reasonably, has advised the IESO in writing that such information is confidential).
- (h) Notwithstanding this Section 12, the IESO may collect, use or disclose Confidential Information regarding the Participant's participation in the XLerate Program for the purpose of administering other eDSM and Save on Energy programs to the Participant. Further, the IESO may:
 - (i) disclose and provide reports, data and other information, including Confidential Information of the Participant or its Representatives to the Participant's LDC, the Participant's gas distribution company, the Ontario Energy Board (or any successor thereto), the Auditor General of Ontario, the Government of Ontario and the Environmental Commissioner of Ontario, provided that the IESO notifies such entity of the confidential nature of such information; and,
 - (ii) at any time make public the Participant's participation in the XLerate Program and data relating to the Participant, including the achievement of Electricity Savings, a description of the Project identified by the Participant and the implementation of such Project by the Participant, aggregated with other studies in a manner intended to report on the XLerate Program or other eDSM and Save on Energy programs.

13. DISPUTE RESOLUTION

If any dispute arises under or in connection with these PFS Terms and Conditions that the Parties cannot resolve, each of the parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior representative will be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration before a single arbitrator (the "**Arbitrator**") pursuant to the Arbitration Act, 1991 (Ontario). A Party desiring arbitration hereunder will give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration ("**Notice of Arbitration**"). If the Parties fail to jointly appoint an Arbitrator, an arbitrator

will be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The arbitration will be conducted in English in the City of Toronto (or as otherwise agreed to by the parties) at such place therein and time as the Arbitrator may fix. The Arbitrator's written decision will be delivered to each Party within 60 days following the conclusion of the arbitration hearing. The cost of any arbitration hereunder will be born by the Parties in the manner specified by the Arbitrator in his/her decision. The decision of the Arbitrator will be final and binding upon the Parties. There will be no appeal from the decision of the Arbitrator to any court, except on the ground that the conduct of the Arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991 (Ontario)* or solely on a question of law as provided for in such act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

14. TERM AND SURVIVAL

These PFS Terms and Conditions become effective as of the date of the Letter of Approval from the IESO, and unless terminated earlier, expires ninety (90) days after the date of payment of the PFS Funding Amount.

Terms, provisions, covenants and conditions contained in these PFS Terms and Conditions which, by their nature or the terms thereof, require their performance by the Parties after the expiration or termination of the PFS Terms and Conditions will continue in full force and effect following such expiry or termination including Sections 4, 6, 9, 10, and 12 to 27 (inclusive).

MISCELLANEOUS

15. NO OBLIGATION

These PFS Terms and Conditions create no obligation for the IESO to approve any PFS Application or subsequent Project Application, or to enter in the Project Terms and Conditions with the Participant.

16. CURRENCY

All dollar amounts referred to herein are expressed in Canadian funds.

17. TIME

Time is of the essence.

18. ENTIRE AGREEMENT

These PFS Terms and Conditions and any amendments thereto, together with the Program Requirements, PFS Letter of Approval, and Release Waiver and Consent, constitute the entire agreement between the parties and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. To the extent these PFS Terms and Conditions conflict or are inconsistent with any other XLerate Program document related to an PFS Funding Amount, unless explicitly stated otherwise in the conflicting document, these PFS Terms and Conditions shall control and govern the rights and obligations of the parties. Any guidance released or provided by the IESO with respect to the XLerate Program that is not expressly incorporated into the PFS Terms and Conditions by reference is not binding on the Parties.

19. GOVERNING LAW

The laws of the province of Ontario apply these PFS Terms and Conditions. The Participant hereby attorns to the jurisdiction of the courts of the Province of Ontario.

20. WAIVER

No waiver of any provision of these PFS Terms and Conditions will be effective or binding unless made in writing and agreed to by an authorized signing officer of the Party purporting to give the same. A waiver of any provisions of these PFS Terms and Conditions shall not constitute either a waiver of any other provisions or a continuing waiver, unless otherwise expressly indicated in writing.

21. ENUREMENT

These PFS Terms and Conditions shall enure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns.

22. SEVERABILITY

In the event that any of the covenants herein shall be held unenforceable or declared invalid for any reason whatsoever, to the extent permitted by law, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions and such unenforceable or invalid portion shall be severable from the remainder of these PFS Terms and Conditions.

23. ASSIGNMENT

The Participant may not assign these PFS Terms and Conditions or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the IESO, which consent may not be unreasonably withheld.

24. AMENDMENT

These PFS Terms and Conditions may not be amended or supplemented except by an agreement in writing signed by both Parties.

25. FURTHER ASSURANCES

The Participant agrees to execute such further assurances and documents, and to do all such things and actions which shall be necessary or proper for the carrying out of the purposes and intent of these PFS Terms and Conditions.

26. NOTICE PROVISION AND COMMUNICATIONS

All notices will be in writing given by e-mail or personal delivery and addressed to: (a) in the case of notice from the IESO to the Participant, the Applicant as identified in the PFS Application Form; and (b) in the case of notice from the Participant to the IESO, XLerate@ieso.ca. Notice will be deemed to have been given or received on the Business Day it is transmitted (if by email) or received (if by courier or hand-delivery).

27. DEFINITIONS

In addition to the terms defined within these PFS Terms and Conditions, the following terms will have the following meanings:

"Affiliate" means any Person that: (a) Controls a Participant; (b) is Controlled by a Participant; or (c) is Controlled by the same Person that Controls a Participant.

"Applicable Law" means any applicable law, including any statute, legislation, treaty, regulation and any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority and any applicable Governmental Approvals.

"Applicable Taxes" means any applicable HST and any other applicable sales or use taxes.

"Applicant" means any Person who has submitted a PFS Application to the IESO.

"Business Day" means a day, other than a Saturday or a Sunday or statutory holiday in the Province of Ontario or any other day the IESO deems a holiday.

"Control" means, with respect to any Person at any time: (a) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that person; or (b) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

"eDSM" means electricity demand-side management.

"Electricity Savings" means the annualized electricity consumption reduction in relation to a proposed Project.

"Eligibility Criteria" means the XLerate Program eligibility criteria for a PFS Application and Report set out in Appendix 2 of the XLerate Program Requirements.

"EM&V" means evaluation, monitoring and verification.

"Facility" or **"Facilities"** means the building(s), premises or lands, or part thereof, over which the Participant has all required authorization and approvals to carry out the Project and which meets the eligibility requirements set out in Section 3.2 of the Program Requirements.

"Governmental Authority" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the Ontario Energy Board, the Electrical Safety Authority, the Environmental Commissioner's Office, and any Person acting under the authority of any of the foregoing.

"HST" means any tax payable under Part IX of the Excise Tax Act (Canada).

"IESO" means the Independent Electricity System Operator established under Part II of the Electricity Act, 1998 (Ontario), and any successor thereto.

"Industrial Process" means any process or system that: (a) involves the extraction, growth, refining, processing, production, manufacture, preparation, or transformation of materials, substances, or energy, including but not limited to manufacturing, HVAC, pumping, or treatment operations (and includes select processes used in industrial, institutional, municipal, or other non-residential settings); and (b) which consume electricity.

"Measures" means any activity undertaken for the primary purpose of obtaining or effecting, directly or indirectly, eDSM, including without limitation, the installation, retrofit, replacement, modification or commissioning of equipment, systems, processes or behaviours that consume or result in the consumption of electricity, or any equipment, system or product related to the foregoing that meets the eligibility requirements set out in Section 3.4 of the Program Requirements.

"MWh" means a megawatt hour.

"Participant" means an Applicant who meets the eligibility requirements set out in Section 3.1 of the Program Requirements and has been issued a PFS Letter of Approval in connection with the XLerate Program.

"Participant Incentive" means the financial incentive paid to a Participant pursuant to the XLerate Program.

"Party" means the IESO or the Participant, and **"Parties"** means both the IESO and the Participant.

"Person" means a natural person, firm, trust, partnership, association, unincorporated organization, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

"PFS Application" means the application made by the Participant for a PFS Funding Amount from the IESO for a Project Feasibility Study under the XLerate Program.

"PFS Eligible Costs" has the meaning ascribed to that term in Section 6.

"PFS Funding Amount" has the meaning ascribed to that term in Section 6.

"PFS Letter of Approval" means the letter issued by the IESO approving the PFS Application.

"PFS Minimum Requirements" means the PFS Application and Report minimum requirements set out in Exhibit 1 of Appendix 2 of the Program Requirements, as the context requires.

"PFS Terms and Conditions" means these terms and conditions agreed to by the Participant to be eligible to receive a PFS Funding Amount.

"Program Requirements" means the Program Requirements for the XLerate Program published online by the IESO, as may be amended from time to time, provided that the then-current version of such Program Requirements, as of the date of the PFS Letter of Approval, is incorporated by reference in to these PFS Terms and Conditions and will continue to apply notwithstanding any subsequent amendments to the Program Requirements, unless the Parties otherwise agree in writing.

"Project" means one or more Measures, which, when implemented in respect of an Industrial Process, is expected to deliver Electricity Savings.

"Project Feasibility Study" or **"Report"** means a detailed study of the consumption of electricity of a Project in order to assess and evaluate a potential Project that meets the Program Requirements.

"Release Waiver and Consent" means the release, waiver and consent agreed to and submitted by the Participant as part of its PFS Application.

"Representative" means, in respect of one of the parties, any one of that Party's directors, officers, employees, partners, representatives, agents or advisors (including financial advisors, legal counsel or accountants).

"Technical Reviewer" means a Person retained by the IESO with the necessary experience and qualifications to carry out certain functions under the XLerate Program.

"XLerate Program" means the XLerate Program administered by the IESO which provides financial incentives for Project Feasibility Studies and the implementation of eligible Projects that are capital intensive.