PROJECT TERMS AND CONDITIONS

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

Capitalized terms used in these Project Terms and Conditions will have the meanings ascribed to them in Section 21 or as otherwise defined herein. The Program Requirements are incorporated by reference and form part of these Project Terms and Conditions. The "**Participant**" is the "**Applicant**" identified on the Project Application Form. "**Application**" means the **Project Application**.

1. GENERAL OBLIGATIONS OF THE PARTICIPANT

Throughout the term of these Project Terms and Conditions, the Participant shall and shall cause the owner(s) and and/or occupier(s) of the Facility to:

(a) implement the Project and perform all of its other obligations hereunder in accordance with these Project Terms and Conditions, Good Engineering Practices and all Applicable Laws;

(b) ensure that its relevant personnel are knowledgeable about the Project and are available to the IESO and the Technical Reviewer with respect to the M&V Plan and the IESO EM&V Protocols;

(c) ensure that all equipment being replaced in whole or in part by all or part of any Measure, when removed, is not sold for re-use and is decommissioned or disposed of in accordance with Applicable Laws;

(d) obtain and maintain all permits and approvals necessary for the installation, verification and operation of the Project;

(e) at no time modify, vary or amend in any material respect any of the features or specifications of the Project (including, its scope, objectives, contractors, consultants, Third Party Contributions, costs and implementation schedule) without first notifying the IESO in writing and obtaining the IESO's consent in writing;

(f) acknowledge the assistance provided by the IESO in all publications, publicity materials and other forms of release or communication pertaining to the Project, provided that the IESO will have the right to approve all such communications in advance;

(g) provide written clarification on any aspect of any document or data submitted by the Participant to the satisfaction of the Technical Reviewer and/or the IESO within 10 Business Days of such request;

(h) maintain, or cause to be maintained, all of the equipment and improvements installed or implemented for a Project in good working order, and operate and maintain, or cause to be operated and maintained, such equipment and improvements without any modification such that Commercially Reasonable Efforts are made to maintain the Electricity Savings throughout the Electricity Savings Period;

(i) ensure that the In-Service Date for the Project will be as stated in the Letter of Approval and in any event no later than the fifth anniversary of the effective date of the Letter of Approval;

(j) prepare and submit to the IESO, in form and substance acceptable to the IESO, an Invoice Reconciliation Form substantially in the form provided in Tab 6 of the XLerate Program Application Workbook. The Invoice Reconciliation Form will be deemed to be a representation and warranty of the Participant to the IESO that the work required to be completed and the costs incurred in connection with the Project have been completed and paid, as applicable;

(k) ensure that the owner(s) of the Facility acknowledges and consents to the installation of the Project and agrees to provide reasonable access to the Facility by the IESO and/or the Technical Reviewer for the purposes of administering these Project Terms and Conditions and evaluation of the Project; and

(l) respond to periodic outreach from the IESO and/or the Technical Reviewer, within 10 Business Days of such request, by providing a written update on the progress of the Project, including the status of any required or overdue M&V Reports, any risks to achieving the estimated In-Service Date set out in the Letter of Approval, and, if applicable, an updated estimated In-Service Date

2. TERM AND SURVIVAL

2.1 TERM

These Project Terms and Conditions become effective as of the date of approval indicated in the Letter of Approval from the IESO, and unless terminated earlier, expires 48 months after the end of the M&V Reporting Period.

2.2 SURVIVAL

Terms, provisions, covenants and conditions contained in these Project Terms and Conditions, which, by their nature or the terms thereof, require their performance by the Parties after the expiration or termination of these Project Terms and Conditions will continue in full force and effect following such expiry or termination, including Sections 1(h), 2, 5, 8, 9, 13, 14, 16, 18, 19, 20, and 21.

3. PARTICIPANT INCENTIVE

3.1 SUPPORTING DOCUMENTATION

The Participant must submit to the IESO: (a) an Invoice Reconciliation Form; (b) detailed and itemized invoices outlining the Eligible Costs incurred by the Participant to complete the Project; and (c) any other supporting documentation reasonably requested by the IESO.

3.2 CALCULATION OF THE PARTICIPANT INCENTIVE

The IESO will calculate the Participant Incentive for a Project as the amount equal to the lower of:

(a) 75% of the amount resulting from the total Eligible Costs of the Project minus any Third Party Contributions;

(b) the product of the Electricity Savings multiplied by:

- **(i)** $300/MWh, capped at 120% of the Approved Amount;
- **(ii)** for Projects within an Identified Local Need Area, the product of the Electricity Savings multiplied by $450/MWh, capped at 120% of the Approved Amount;

(c) the amount that would provide a Project Payback of one year for the Project; and

(d) $15,000,000 per Project.

For the purposes of item (a) above, the "Eligible Costs" used in the calculation will be the lower of: (i) the Estimated Eligible Costs; and (ii) the Actual Eligible Costs.

4. PROJECT PARTICIPANT INCENTIVE PAYMENT SCHEDULE

Provided the Participant is not in default hereunder, and subject to the IESO's approval of the applicable M&V Report, the IESO will pay the Participant the Participant Incentive calculated in accordance with Section 3.2 in two installments as follows:

(a) **First Payment** – 50% of the Participant Incentive, calculated based on the Electricity Savings set out in the Q1 M&V Report, provided that the Q1 M&V Report demonstrates

Electricity Savings greater than 50% of the Anticipated Electricity Savings for the Q1 period. Projects that achieve less than 50% of the Anticipated Electricity Savings for the Q1 period will not be eligible for the First Payment, and the Project's performance will instead be reassessed during the Y1 M&V Report; and

(b) **Balance Payment** – the balance of the Participant Incentive, calculated as the difference between the actual Participant Incentive as determined by the Electricity Savings set out in the Y1 M&V Report and the total payments made to date, provided that the Y1 M&V Report demonstrates Electricity Savings greater than 50% of the Anticipated Electricity Savings for the Y1 period. Projects that achieve less than 50% of the Anticipated Electricity Savings for the Y1 period will not be eligible for any Participant Incentive payments (i.e., First Payment or Balance Payment). In cases where the IESO previously issued the First Payment pursuant to the above, that First Payment will be recoverable by the IESO from the Participant.

5. METHOD OF PAYMENT

Applicable Payments under Section 4 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. The submission of the Invoice Reconciliation Form will be deemed to be a representation and warranty of the Participant to the IESO that the work required to be completed or costs required to be incurred and paid to qualify to receive such payment has been completed in all material respects or paid in accordance with the evidence thereof provided to the IESO, unless otherwise agreed to in writing by the IESO. In addition to the Participant Incentive, the IESO will pay any Applicable Taxes on the Participant Incentive. 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 Participant Incentive.

6. IN-SERVICE DATE

The Participant will cause the Project to achieve the In-Service Date on or before the fifth anniversary of the date of the Letter of Approval. For certainty, a Project that is not in-service by the fifth anniversary of the date of the Letter of Approval will not be eligible to receive the Participant Incentive. The Participant will deliver to the IESO not less than 10 Business Days' prior written notice of the date of the commissioning of the Project and of the proposed In-Service Date, and will provide any data or reports in electronic or written form relating thereto as may be reasonably requested by the IESO and/or the Technical Reviewer to confirm the In-Service Date has been met. To confirm if a Project has met the In-Service Date, the IESO and/or the Technical Reviewer may also conduct an on-site review. The IESO will notify the Participant upon confirmation of the occurrence of the In-Service Date.

7. ROLE OF THE 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 Project 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 under these Project Terms and Conditions. The Technical Reviewer will provide the IESO with independent technical expertise and administrative assistance in respect of the Project. The Participant shall, and shall cause the owner(s) and/or occupier(s) of the Facility, to cooperate with the Technical Reviewer and provide the Technical Reviewer with any required data, reports, information and access to the Facility in order for the Technical Reviewer to perform its obligations in respect of the Project, including, without limitation, historical energy use, energy consumption or any other information relating to the Facility required by the Technical Reviewer for measurement and verification purposes.

8. M&V PLAN / M&V REPORTS

Prior to the IESO providing a Letter of Approval to the Participant, the Participant will provide the IESO and the Technical Reviewer with a draft M&V Plan for the Technical Reviewer to review. The Technical Reviewer will work with the Participant to revise the draft M&V Plan as necessary to ensure adherence with the XLerate Program Requirements and the IPMVP. The M&V Plan shall be approved by the Technical Reviewer and the IESO, each acting reasonably. The M&V Plan approved by the Technical Reviewer and the IESO is deemed to be incorporated into these Project Terms and Conditions, with the same force and effect as though fully set forth herein. The Participant agrees to fulfill all of its obligations pursuant to the M&V Plan. The actual Electricity Savings determined by the Technical Reviewer and set out in any M&V Report will be used by the IESO and the Technical Reviewer, to, among other things, assess whether the Project has achieved the Anticipated Electricity Savings for the applicable M&V Reporting Period.

The "**M&V Reporting Period**" specified in the M&V Plan shall be for one year following the In-Service Date, provided that the Participant has fulfilled all of its obligations pursuant to the M&V Plan. The Participant is responsible for calculating the Electricity Savings per the M&V Plan and delivering the following two M&V Reports:

1. the first quarterly M&V Report will be delivered within a reasonable timeframe following the end of the first quarter after the In-Service Date (the "**Q1 M&V Report**"); and
2. the first annual M&V Report (the "**Y1 M&V Report**") will be delivered within a reasonable timeframe following the first anniversary of the In-Service Date.

Notwithstanding the foregoing, the IESO may: (a) require further M&V Reports for the Project throughout the term of these Project Terms and Conditions; and (b) extend the M&V Reporting Period in its sole discretion.

9. EVALUATION, MONITORING AND VERIFICATION (“EM&V”)

The Project is subject to IESO EM&V Protocols to evaluate the achievement of Electricity Savings. 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) on at least five Business Days’ prior written notice, during normal business hours, and at such frequency as the IESO reasonably requires, provide reasonable access to the IESO and/or its designates to the Participant's premises or Facility for the purposes of performing an inspection or technical audit in connection with the IESO EM&V Protocols or to confirm that the Participant and each of its contractors has performed its obligations in respect of the Project in accordance with these Project Terms and Conditions;

(c) keep complete and accurate books, accounts and records and all other data required for the purpose of proper administration and EM&V of the Project for the applicable Electricity Savings Period; and,

(d) on reasonable notice, provide reasonable access to the IESO and/or its respective designates to such books, accounts, records and other data and permit the IESO and/or its respective designates to examine, audit and take copies and extracts from such documents.

With respect to item c) immediately above, the Participant must retain all information required and permit access to the IESO and/or its designates for a period of seven years following the end of the Electricity Savings Period.

10. ADJUSTED PARTICIPANT INCENTIVE

In the event that the actual Electricity Savings set out in the Y1 M&V Report is less than the Anticipated Electricity Savings, the Participant Incentive will be recalculated in accordance with Section 3.3 (the “**Adjusted Participant Incentive**”) and subject to meeting the 50% Anticipated Electricity Savings threshold set out in Section 4. If the recalculation results in an overpayment of the Participant Incentive by the IESO, in addition to any other remedies available to the IESO pursuant to these Project Terms and Conditions, the IESO shall be entitled to repayment from the Participant of an amount equal to the difference between the

Participant Incentive and the Adjusted Participant Incentive. The Participant shall make any repayment to the IESO within 30 Business Days of receiving notification from the IESO of the repayment amount.

11. CHANGE NOTICE RE DECREASE IN ANTICIPATED ELECTRICITY SAVINGS

The Participant will immediately provide the IESO written notice of any change or proposed change in the Project which will, or could reasonably be expected to, or has resulted in a decrease in the Anticipated Electricity Savings.

12. REPRESENTATIONS AND WARRANTIES

The Participant covenants, represents and warrants to the IESO as follows, and acknowledges that the IESO is relying on such representations and warranties in issuing a Letter of Approval and entering into these Project Terms and Conditions:

(a) the Participant, Facility and Project meet the Eligibility Criteria;

(b) the Participant and the owner(s) or occupier(s) of the Facility would not have undertaken the Project without the Participant Incentive;

(c) all of the information set out in the Application is complete and accurate in all material respects and is an accurate representation of the Project;

(d) the Participant has the requisite power, authority and capacity to enter into these Project Terms and Conditions and to perform its obligations hereunder;

(e) there is no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Participant or, to the knowledge of the Participant, threatened against the Participant;

(f) there is no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the owner(s) or occupier(s) of the Facility or, to the knowledge of the Participant, threatened against the owner(s) of the Facility;

(g) there are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Participant, threatened against the Participant, that could have a Material Adverse Effect on the Participant;

(h) the Participant has and will ensure that the owner(s) and occupier(s) of the Facility have obtained all of the necessary internal approvals in order to proceed with the implementation of the Project;

(i) the Participant has title to, a leasehold interest in, or other contractual rights in respect of the Facility, sufficient to enable the Participant to undertake the Project;

(j) the Participant and/or the owner(s) or occupier(s) of the Facility, as the case may be, shall make any declaration, filing or registration with, give any notice to or obtain any Governmental Approval required by Applicable Law, as a condition to entering into these Project Terms and Conditions and to fulfill its obligations hereunder. Further, all Governmental Approvals that are required at the time of this representation for the performance of the Participant's obligations have been obtained;

(k) the execution of these Project Terms and Conditions and the performance of the Participant's obligations under them will not result in the breach or violation of any of the provisions of its material obligations or any judgement, decree, order or award to which it is subject or any Governmental Approval held by it;

(l) the Participant has not ,and the owner(s) or occupier(s) of the Facility have not, prior to submitting the Application, entered into an agreement with any contractor or consultant, or ordered or purchased any equipment for use in relation to the Project, other than in connection with a Project Feasibility Study approved by the IESO in writing;

(m) the Participant is not a non-resident of Canada for the purposes of the Income Tax Act (Canada);

(n) the Participant shall not, and shall ensure that the owner(s) and occupier(s) of the Facility shall not, directly or indirectly assign, transfer or sell any electricity it generates from a Project into a Distribution System or the IESO-Connected Grid, except as agreed in writing by the IESO;

(o) for Waste Energy Recovery Projects only, the Participant shall not use, and shall ensure that the owner(s) and occupier(s) of the Facility shall not use, the Project at any time during the term of these Project Terms and Conditions for the primary purpose of reducing electricity demand during the five critical system-peak hours;

(p) where the Participant is an Affiliate of a LDC, the execution and implementation of the Project and the consummation of the transactions contemplated therein are in compliance with all of the requirements under the Ontario Energy Board’s Affiliate Relationships Code;

(q) where the Participant is an Affiliate of a LDC, Eligible Costs may consist only of costs on a fully-allocated cost basis; and

(r) If there is a Third Party Participant, the Third Party Participant has the authority to act on behalf of the owner/operator of the Facility and to bind such owner/operator to these Project Terms and Conditions.

The representations and warranties provided in this Section 12 will be continuing throughout the term of these Project Terms and Conditions. Any change in the accuracy of such representations and warranties must promptly be communicated by the Participant to the IESO in writing.

13. DEFAULT CONDITIONS

13.1 EVENT OF DEFAULT

Each of the following will be an event of default by the Participant ("**Event of Default**") if not remedied within five Business Days following written notice from the IESO, provided that such cure period may be extended by the IESO if the IESO is satisfied that the Participant is diligently remedying such failure and such failure is capable of being cured during such extended cure period:

(a) the In-Service Date has not occurred in accordance with Section 6;

(b) the Project ceases to deliver Electricity Savings during the Electricity Savings Period (other than for regularly scheduled maintenance);

(c) the Project is operated in any way other than with the intent of achieving the Anticipated Electricity Savings throughout the Electricity Savings Period;

(d) the Participant fails to perform any material covenant or obligation set forth in these Project Terms and Conditions;

(e) any representation or warranty made by the Participant in these Project Terms and Conditions is not true or correct in any material respect;

(f) the Participant fails or ceases to hold a valid license, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority that is necessary for the implementation of the Project;

(g) the Facility ceases to carry on business in the ordinary course;

(h) documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Participant or of the owner(s) or occupier(s) of the Facility;

(i) the Participant and/or the owner(s) or occupier(s) of the Facility amalgamates with, or merges with or into, or transfers the Facility and/or all or substantially all of its assets to, another Person, unless at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment by the Participant of these Project Terms and Conditions to the resulting, surviving or transferee Person and such Person has assumed all of the obligations of the Participant and/or of the owner(s) or occupier(s) of the Facility, as the case may be, of these Project Terms and Conditions;

(j) the Participant and/or owner(s) or occupier(s) of the Facility, as the case may be, makes an assignment for the benefit of its creditors generally under any Applicable Law, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Applicable Law; or

(k) the Participant has made a material amendment to a Project that has not first been consented to in writing by the IESO.

13.2 REMEDIES OF THE IESO

Without limiting any other rights or remedies available to the IESO, if an Event of Default occurs, upon written notice to the Participant, the IESO:

(i) may terminate these Project Terms and Conditions and the Participant will no longer be eligible to receive the Participant Incentive; and

(ii) will be entitled to an amount as liquidated damages and not as a penalty, calculated as follows: (amount of the Participant Incentive paid by the IESO to the Participant) x (duration of Event of Default) ÷ (total months in the Electricity Savings Period).

14. 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 project and/or these Project 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.

15. 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, S.O. 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.

16. 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 16;

(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 Project 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 this Section 16. The Receiving Party will be responsible for any breaches of this Agreement by any of its Representatives, as if such Representatives were a party to these Project 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 this Section 16;

(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 16. 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 16.

(g) Unless otherwise agreed to in writing by the Parties, upon the expiry or termination of these Project Terms and Conditions and at the Disclosing Party's request, the Receiving Party will destroy or deliver to the Disclosing Party all, or a Disclosing Party-specified portion of, the Confidential Information, together with all copies, extracts or other reproductions in whole or in part of such Confidential Information, provided that the Receiving Party may retain any copies of Confidential Information (i) required to comply with the requirements of any applicable legislation, other legal requirement, internal record retention policies or procedures or good governance, and (ii) automatically created on the Receiving Party's or Representative's computer systems by its normal back-up procedures for the period it normally archives backed-up computer records; however, such Confidential Information referred to in (i) and (ii) remains confidential and subject to the terms of these Project Terms and Conditions. Following delivery or destruction, as the case may be, on the request of the Disclosing Party, the Receiving Party will provide the Disclosing Party with written confirmation of completion.

(h) Without limiting the terms of this Section 16, 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).

(i) Notwithstanding this Section 16, 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.

17. FORCE MAJEURE

17.1 DEFINITION OF FORCE MAJEURE. "FORCE MAJEURE"

means any act, event, cause or condition that prevents a Party from performing its obligations under the Program Requirements or these Project Terms and Conditions, or prevents the Participant from achieving the In-Service Date, but only if and to the extent that the impact of such act, event, cause or condition on the affected Party could not reasonably have been anticipated as at the time the Participant submitted its application to the XLerate Program, and includes: (a) acts of God, including extreme weather-related events; (b) fires or explosions; (c) emergencies; (d) strikes or other labour disputes other than strikes by employees or personnel of the affected Party, unless part of a general industry strike or labour dispute; (e) civil disobedience or disturbances; or (f) an order, judgment, legislation, ruling or direction by any Governmental Authority restraining a Party.

17.2 FORCE MAJEURE NOTIFICATIONS

A Party invoking Force Majeure will give the other Party written notice within five Business Days of the commencement of the Force Majeure event, and within five Business Days following the termination of the Force Majeure event.

17.3 EFFECT OF INVOKING FORCE MAJEURE

If, by reason of Force Majeure, a Party is unable, wholly or partially, to perform or comply with its material obligations under the XLerate Program (including the obligations in the Program Requirements and these Project Terms and Conditions), then that Party will be excused and relieved from performing or complying with such obligations, and will not be liable for any non-performance or non-compliance during that Force Majeure period. If, by reason of one or more events of Force Majeure, the Participant is unable to achieve the In-Service Date in respect of a Project by no later than the fifth anniversary of the date of the Letter of Approval, then the IESO may terminate the Participant's participation in the XLerate Program, and the Participant will no longer be eligible for a Participant Incentive for the Project.

18. DISPUTE RESOLUTION

If any dispute arises under or in connection with these Project 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.

19. MISCELLANEOUS

19.1 ENVIRONMENTAL ATTRIBUTES

All Environmental Attributes arising in respect of any Electricity Savings arising from a Participant's participation in the XLerate Program, whether existing now or arising in the future (the "**Electricity Savings Environmental Attributes**") will be allocated on a proportionate basis, with the IESO owning an amount equal to the total quantity of Electricity Savings Environmental Attributes multiplied by the EA Funding Percentage (the result being the "**IESO Environmental Attributes**") and the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, owning the remaining quantity of the Electricity Savings Environmental Attributes (the "**Participant Environmental Attributes**"). All other environmental attributes arising in relation to a Participant will be owned by the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, and the IESO will not have any entitlement to them. For the purposes of this Section 19.1, EA Funding Percentage means, in respect of the Project, the total Participant Incentive paid divided by the total amount of actual costs incurred by the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, that meet the eligibility requirements for such costs set out under these Project Terms and Conditions, multiplied by 100, and expressed as a percentage.

The Participant or the owner(s) and occupier(s) of the Facility, as the case may be, shall notify the IESO in writing prior to assigning, transferring, encumbering, submitting for compliance purposes, trading or otherwise using (collectively, "realizing") any of the Participant Environmental Attributes, with such notice to include:

(a) the quantity of Participant Environmental Attributes to which the Participant believes it is entitled;

(b) the quantity of Electricity Savings Environmental Attributes and the EA Funding Percentage used to determine the quantity of Participant Environmental Attributes; and

(c) supporting calculations and data used to determine the total quantity of Electricity Savings Environmental Attributes and the EA Funding Percentage.

The IESO will contact the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, prior to the IESO realizing on any of the IESO Environmental Attributes. The Participant will or will cause the or the owner(s) and occupier(s) of the Facility, as the case may be, to provide such information and cooperation as may be reasonably requested by the IESO for the purposes of confirming the allocation of Electricity Savings Environmental Attributes following a notification.

The Participant agrees that it will, or will cause the owner(s) and occupier(s) of the Facility, as the case may be, from time to time, upon written direction of the IESO, to take all such actions and do all such things necessary to:

(a) effect the transfer and assignment to, or holding in trust for, the IESO all rights, title and interest in all IESO Environmental Attributes; and

(b) certify, obtain, qualify and register with the relevant authorities or agencies any IESO Environmental Attributes that are created and allocated or credited pursuant to applicable laws and regulations from time to time for the purpose of transferring such IESO Environmental Attributes to the IESO. The Participant will be entitled to reimbursement by the IESO of the cost of complying with such a direction provided that the IESO, acting reasonably, has approved such cost of compliance in writing prior to the cost being incurred by the Participant and provided that such reimbursement will be limited to: (x) the total amount of such cost of compliance that have been approved in advanced by the IESO, multiplied by (y) the applicable EA Funding Percentage.

19.2 CURRENCY

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

19.3 TIME

Time is of the essence.

19.4 ENTIRE AGREEMENT

These Project Terms and Conditions and any amendments thereto, together with the Program Requirements, the Letter of Approval, Release Waiver and Consent, and the M&V Plan constitute the entire agreement between the Parties and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. To the extent these Project Terms and Conditions conflict or are inconsistent with any other XLerate Program document related to a Participant Incentive (including the PFS Terms and Conditions), these Project 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 Project Terms and Conditions by reference is not binding on the Parties.

19.5 GOVERNING LAW

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

19.6 WAIVER

No waiver of any provision of these Project 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 Project Terms and Conditions shall not constitute either a waiver of any other provisions or a continuing waiver, unless otherwise expressly indicated in writing.

19.7 ENUREMENT

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

19.8 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 Project Terms and Conditions.

19.9 ASSIGNMENT

The Participant may not assign these Project 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.

19.10 AMENDMENT

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

19.11 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 Project Terms and Conditions.

19.12 NO OBLIGATION

These Project Terms and Conditions create no obligation for the IESO to approve any Project Application.

20. 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 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).

21. DEFINITIONS

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

“**Actual Eligible Costs**” means those Eligible Costs that are confirmed by the Technical Reviewer and approved by the IESO based on the supporting documentation submitted in accordance with Section 3.1.

“**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.

“**Anticipated Electricity Savings**” means the Project’s estimated electricity consumption reduction as defined in the Letter of Approval, pro-rated to the duration of the Reporting Period in question (i.e. Q1 or Y1). For seasonal or other Measures with varying impact, the Anticipated Electricity Savings will be defined by month in the M&V Plan and subsequently referenced in the appropriate M&V Report.

“**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.

“**Applicant**” means any Person who has submitted an application to the XLerate Program.

“**Applicable Taxes**” means any applicable HST and any other applicable sales or use taxes.

“**Approved Amount**” is the estimated Participant Incentive approved by the IESO and communicated to the Participant in the Letter of Approval.

“**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.

“**Commercially Reasonable Efforts**” means all efforts required to satisfy, complete or achieve a condition, obligation or undertaking contemplated herein and which do not require to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount.

“**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.

“**Distribution System**” means a system connected to the IESO-Controlled Grid for distributing electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other thing used for that purpose.

“eDSM” means electricity demand-side management.

“**Electricity Savings**” means the annualized electricity consumption reduction in relation to a Project. Note that for calculation of the Participant Incentive for a Project, the Electricity Savings is an estimated value until an actual value is verified in the Q1 M&V Report and the Y1 M&V Report.

“**Electricity Savings Period**” means a minimum of 48 months after the end of the M&V Reporting Period.

"**Eligibility Criteria**" means the XLerate Program eligibility criteria for a Project Participant Incentive (including in relation to eligible Participants, Facilities, Projects, Measures and costs) set out in Section 3 of the Program Requirements.

"**Eligible Costs**" means those costs that satisfy the requirements of Section 3.5 of the Program Requirements.

“**EM&V**” has the meaning ascribed to that term in Section 9.

“**Estimated Eligible Costs**” means the estimated Eligible Costs included in the Application and confirmed in the Letter of Approval.

“**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, more specifically described in the Application.

“**Generation**” means a process used to produce energy in the form of electricity, that is for the Participant's own use and the impact of which is measured in accordance with the M&V Plan.

“**Good Engineering Practices**” means any of the practices, methods and activities adopted by a significant portion of North American industries as good practices applicable to the design, building, and operation of projects of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent engineer in light of all the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Law; Good Engineering Practices are not intended to be the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods or acts generally accepted in North American industries.

"**Governmental Approval**" means any declaration, filing or registration with, notice to or license, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority pertaining to a Project.

"**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).

"**Identified Local Need Areas**" mean areas that represent local needs identified by the IESO through review of regional planning outcomes, where there is potential to benefit from further energy efficiency above and beyond the level accounted for in the regional planning forecast (to either manage system conditions until infrastructure can come into service or help defer long-term local transmission investments).

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

"**IESO-Controlled Grid**" has the meaning ascribed to it by the IESO Market Rules.

"**IESO Market Rules**" means the rules made under Section 32 of the *Electricity Act, 1998* (Ontario), together with all market manuals, policies, guidelines and interpretation bulletins issued by the IESO.

"**IESO EM&V Protocols**" means the methods and processes that the IESO develops for the evaluation, measurement and verification of eDSM programs and initiatives, as such methods and processes may be amended from time to time.

"**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 consumes electricity.

"**In-Service Date**" means the first day that the Project is fully installed in accordance with the M&V Plan and delivers Electricity Savings, as confirmed by the IESO.

"**Invoice Reconciliation Form**" means the invoice reconciliation form, substantially in the form made available in Tab 6 of the XLerate Application Workbook, which specifically itemizes Eligible Costs and describes: (a) all eligible equipment, systems, parts and other products, and the relating prices paid for same; (b) all services in respect thereof; and (c) the anticipated In-Service Date.

"**IPMVP**" means the Efficiency Valuation Organization's International Performance Measurement and Verification Protocol Core Concepts, March 2022, EVO 10000 – 1:2022 (or later).

"**LDC**" means local electricity distribution company.

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

"**M&V Plan**" means the measurement and verification plan submitted by the Participant that is approved by the IESO, outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings achieved by a Project.

"**M&V Report**" means a measurement and verification document submitted by the Participant (in accordance with the M&V Plan) that is approved by the IESO, that contains an analysis of the quantified Electricity Savings delivered by the Measure or Measures included in a Project during the M&V Reporting Period.

"**M&V Reporting Period**" means the one year period following the In-Service Date.

"**Material Adverse Effect**" means any change (or changes taken together) in, or effect on, the affected party that materially and adversely affects the ability of such party to perform its obligations under these Project Terms and Conditions.

"**Measure**" 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.

"**MWh**" means megawatt hour.

"**Participant**" means a Person who meets the eligibility requirements set out in Section 3.1 of the Program Requirements and has been issued a 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.

"**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 Letter of Approval, is incorporated by reference into these Project 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 Application**" or "**Application**" means the application made by the Participant for a Participant Incentive from the IESO for an eligible Project under the XLerate Program.

“**Project Benefits**” means the dollar amount which is the sum of all benefits to be generated from the implementation of the Project during the Electricity Savings Period, including Electricity Savings and benefits not related directly to Electricity Savings, including from reducing other energy consumption, use of alternative fuels, positive and negative differences in operating and maintenance costs and other avoided costs.

“**Project Feasibility Study**” 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, that has been funded under this XLerate Program.

“**Project Payback**” means the number of years it will take a Project to recover the Eligible Costs of such Project through the receipt of Project Benefits, calculated by: (a) subtracting from the lower of the Estimated Eligible Costs and the Actual Eligible Costs the Participant Incentive; and (b) dividing the difference thereof by the annualized Project Benefits, such amounts to be actual or estimated, as the case may be, at such time of determination.

“**Project Terms and Conditions**” means these terms and conditions agreed to by the Participant to be eligible to receive a Participant Incentive for a Project.

“**Release Waiver and Consent**” means the Release Waiver and Consent issued by the IESO which Participants must agree to in order to participate in the XLerate Program.

“**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.

“**Third Party Contributions**” means any financial or other contribution (including without limitation, the value of contributions in kind) towards the costs of a Project (which qualify as Eligible Costs under the XLerate Program) from or by any Person other than the Participant or the IESO, including but not limited to federal initiatives or gas incentives.

"**Third Party Participant**" means a person who will install and operate a Project at the Facility on behalf of the owner/operator of the Facility. For the purposes of these Project Terms and Conditions, a Third Party Participant will be subject to the rights and obligations set forth herein as if it were the "Participant".

“**Waste Energy Recovery**” or “**WER**” means the Generation of electricity primarily from energy sources that are waste by-products of the Facility, including but not limited to waste heat, combustible off-gasses, or waste-derived fuels, which would otherwise be vented, flared, dissipated, or discarded without recovery.

"**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.