

Scoping Audit, Engineering Study and Retro-Commissioning Investigation Terms and Conditions

These Terms and Conditions (“Terms and Conditions”) apply to all participants in Energy Efficiency Alberta (“EEA”) Custom Energy Solutions (“CES”) program, for the implementation of measures that reduce energy use and associated greenhouse gas (“GHG”) emissions by industrial, institutional and commercial customers with facilities operating within the Province of Alberta (“Custom Project Implementation Incentives”). CES may be implemented by EEA and/or a third-party administrator (“Consultant”).

Scoping audits, engineering studies, recommissioning, and retro-commissioning (“RCx”) investigations (collectively, the “Services”) are defined as facility audits and studies that identify measures that reduce energy use and associated GHG emissions through the installation of equipment upgrades, process improvements, operating procedures and/or maintenance procedures at customer-owned facilities. Identified measures may be routed through EEA’s Custom Project Incentive offer for additional incentive opportunities.

Industrial, institutional and commercial facility owners operating within the Province of Alberta (“Applicants”) who are not classified as Large Final Emitters (LFE)¹ or are not facilities that have opted into the *Carbon Competitiveness Incentive Regulation* are eligible to apply for Custom Project Implementation Incentives, regardless of the electric generation, natural gas or alternative fuel suppliers from which the Applicant has chosen to purchase their energy supplies.

More details on eligibility including eligible projects, eligible measures and eligible/ineligible expenses, and more detail on scoping audits, engineering studies and RCx investigations including incentive payment instalments can be found on the CES page at www.encyalberta.ca/customsolutions.

By submitting an application to EEA for a scoping audit, engineering study or RCx investigation, the Applicant acknowledges and agrees that:

- a) The Applicant is an eligible Applicant as described in these Terms and Conditions.
- b) The Applicant represents and agrees that all information submitted to EEA under these Terms and Conditions is true and that the Applicant has conformed to all CES requirements and other requirements communicated to it by EEA or set out in these Terms and Conditions.
- c) The Applicant represents and agrees that the customer facility qualifies for CES incentives by not being classified as a LFE or not having opted into the *Carbon Competitiveness Incentive Regulation*.
- d) Incentives for the Services are available at a subject facility that has not undergone similar audits, studies or investigations within the previous 24 months.

¹ A Large Final Emitter (LFE) means facilities that are subject to the Carbon Competitiveness Incentive Regulation (formerly the Specified Gas Emitters Regulation). This applies to facilities that have emitted more than 100,000 tonnes of carbon dioxide equivalent (CO₂e) in 2003 or any subsequent year.

- e) The Applicant will apply best efforts to meet the, requirements, schedule, energy savings and GHG reduction potential specified in the application, pre-approval notification and applicable pre and post-site inspections, and to install the specified GHG reduction measures.
- f) The Applicant will commit facility operations staff time to the Services, and provide building, operations and equipment documentation, facility and control system access and energy use and cost data required to complete the Services.
- g) Applications for the Services must be submitted and be pre-approved in writing by the Consultant before resources are hired, contracted and/or retained to complete the defined scope of work. To determine eligibility relative to this requirement, the system time-stamp and date from the application portal of the application's pre-approval will serve as the effective date.
- h) Upon completion of the Services, the Applicant must submit required documents via the application portal. Proof of purchase includes the approved vendor's hours, hourly rates and expenses relevant to the application for the Services. EEA reserves the right to verify proof of payment by requesting additional information and taking any steps it considers necessary to do so.
- i) Where required by EEA to support the review of an application, the Applicant will provide EEA with reasonable access to the facility to inspect the equipment or product installation that is the subject of the application. EEA reserves the right to withhold, revise or reclaim any incentive until it has performed a satisfactory post-installation verification, inspected installed measures, and verified the energy savings achieved. The Applicant agrees to remedy any issue arising from auditing and monitoring results at no additional cost to EEA and within the timeframe provided by EEA and/or its consultants. Incentives may be withheld if the Applicant refuses to participate in any required report revision or verification within the timeframe provided by EEA. The Applicant will repay to EEA on EEA's request any incentive that was paid prior to an unsatisfactory post-installation verification.
- j) If the project is found by EEA to not match the documentation provided during application for pre-approval, during an on-site visit or otherwise, the Applicant agrees to immediately return any incentive payments received by it with respect to that project to EEA.
- k) Scoping audit, engineering study and RCx investigation incentives provided by EEA pursuant to these Terms and Conditions are subject to change by EEA at any time without notice to the Applicant.
- l) The payment of a scoping audit, engineering study or RCx investigation incentive by EEA is dependent upon availability of funds and the distribution of incentives across Alberta. EEA reserves the right to deny any application made pursuant to these Terms and Conditions for any reason including that it may result in EEA exceeding its program budget.
- m) EEA may at its sole discretion, approve or reject any application incentive at any time.

- n) EEA will use best efforts to review each application that has received approval and to make payments of incentives related to such an application within 60 days of the Applicant submitting the application pursuant to these Terms and Conditions. Submitting an application form with incomplete or missing information will delay processing of payment.
- o) Incentive rates and limitations are set out on the CES page of www.energycanada.ca and in associated approval letter(s). Applicants and/or contractors are responsible for all costs associated with sales tax. For greater certainty, the Applicant is responsible for any tax liability or other fees arising from its receipt of an incentive payment from EEA.
- p) Incentives will only be paid directly to the Applicant by EEA.
- q) Environmental attributes are defined as potential benefits arising from the reduction in consumption of natural gas and electricity from energy savings and GHG reduction projects, as well as carbon offset credits created due to reduced energy consumption or reduced emissions of greenhouse gases. For the purposes of Custom Energy Solutions, the environmental attributes are quantified as tonnes of Carbon Dioxide equivalent (CO₂e). As a condition of the payment of Custom Project Implementation Incentive by EEA under these Terms and Conditions, the Applicant agrees to convey ownership to EEA, or its successors, all environmental attributes and environmental products that are created or otherwise arise from the project that is the subject of the application in any jurisdiction, including but not limited to carbon offset credits. EEA retains the right to adjust program guidelines in accordance to amendments to the Government of Alberta's legislation, policies, or protocols surrounding greenhouse gas emissions, carbon accounting or the carbon offset system. The Applicant further attests that said attributes have not been claimed, sold or otherwise transferred to another party.
- r) Installed Incentivized Equipment and Products include equipment and/or products installed, improved, or otherwise upgraded under the terms and conditions of the Custom Project Implementation Incentive Terms and Conditions agreement and for which Custom Project Implementation Incentives have been paid to the Applicant by EEA. From the date of pre-approval of the application until five years after the last incentive payment date, the Applicant shall not sell, lease, or otherwise dispose of, directly or indirectly, any Installed Incentivized Equipment and Products to any entity, without the prior written approval of EEA, which may be reasonably withheld. The Applicant may be required to reimburse the Federal government via EEA, any funds received from EEA, if at any time within five years from the last incentive payment date, the Applicant sells, leases, or otherwise disposes of, directly or indirectly, any Installed Incentivized Equipment and Products purchased, acquired, constructed, rehabilitated, or renovated, in whole or in part, as a result of or in connection with the CES, other than to the Federal government, the Government of Alberta, a local government, or with the Federal government's written consent.
- s) Applicants or facilities/companies where projects are completed may not use the EEA or CES name or logo in any marketing, advertising, or promotional materials without EEA's prior written consent.

- t) EEA reserves the right to publicize the Applicant's participation in the CES, with prior written consent from the Applicant.
- u) Failure of the Applicant to comply with any aspect of these Terms and Conditions may result in the Applicant being barred from future participation in any and all EEA programs for any period of time.
- v) EEA AND ITS CONSULTANTS DO NOT ENDORSE, GUARANTEE, OR WARRANT ANY PARTICULAR MANUFACTURER OR PRODUCT, AND EEA AND ITS CONSULTANTS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, FOR ANY PRODUCTS OR SERVICES WHETHER DEEMED BY EEA OR ITS CONSULTANTS TO BE "ELIGIBLE" OR NOT. EEA AND ITS CONSULTANTS DO NOT EXPRESSLY OR IMPLICITLY WARRANT THE PERFORMANCE OF INSTALLED EQUIPMENT OR ANY SERVICE PROVIDER OR INSTALLATION CONTRACTOR'S QUALITY OF WORK. EEA AND ITS CONSULTANTS DO NOT MAKE ANY REPRESENTATIONS OF ANY KIND REGARDING THE RESULTS TO BE ACHIEVED BY THE ENERGY-SAVING MEASURES OR THE ADEQUACY OR SAFETY OF SUCH MEASURES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- w) EEA's and its consultants' sole liability hereunder is limited to paying the properly qualified incentives specified herein. Neither EEA, its Consultants, or either of their directors, officers, consultants, agents, servants or their respective successors and assigns will have any liability whatsoever or howsoever to the Applicant, or any of its employees, representatives, directors, or officers, or any of them, in connection with these Terms and Conditions, the custom project or any application submitted to EEA under these Terms and Conditions.
- x) No Claims. The Applicant will not make a claim against EEA or its directors, officers, consultants, agents, servants or their respective successors and assigns for any reason whatsoever or howsoever relating to these Terms and Conditions.
- y) Disclaimer. EEA takes no responsibility for the accuracy of the information supplied during the application process by EEA or its directors, officers, consultants, project advisors, agents, servants or their respective successors and assigns.
- z) Miscellaneous. These Terms and Conditions shall be governed by and construed under the laws of the Province of Alberta, without regard to conflict of law rules. Any dispute or claim that relates to the CES program or these Terms and Conditions, their interpretation or breach, or to the existence, scope, or validity of these Terms and Conditions or this arbitration provision, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules and judgment upon the award rendered pursuant to such arbitration may be entered in any court with jurisdiction. The parties acknowledge that mediation helps parties settle their disputes and any party may propose mediation whenever appropriate through JAMS International or any mediator selected by the parties. If any provision of these Terms and Conditions is invalid or unenforceable in any jurisdiction, the other provisions shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of these Terms and Conditions. The invalidity or unenforceability of any provision

of these Terms and Conditions in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction. The failure of any party to enforce strict performance by the other of any provision of these Terms and Conditions, or to exercise any right available to a party, shall not be construed as a waiver of such party's right to enforce strict performance in the same or any other instance.