

Agreement

Efficiency Manitoba (“EM”) offers an “Incentive(s)” to an eligible building owner (the “Applicant”) who installs energy-efficient products and materials (the “Products”) that qualify under the Commercial Refrigeration Program (the “Program”) terms and conditions set out below and as set out in Appendix A – Program Eligibility Criteria, which forms part of this Agreement.

The Commercial Refrigeration Program Financial Incentive Application (the “Application”) is conditional on APPROVAL by Efficiency Manitoba under the Program and forms a binding agreement on the Applicant. All information provided by the Applicant must be true and correct as at the application date. This Application must be APPROVED BY EFFICIENCY MANITOBA BEFORE the Products can be purchased or work can begin on the project. All Incentive amounts are estimates and will be finalized based on the Applicant meeting all terms and conditions of the Program and a review of all application materials including completion paperwork, invoicing, and any final inspections. The Incentive will be calculated in accordance with the Program’s incentive calculations set out in the Program Guide, which may be amended by EM in its discretion. See efficiencymb.ca/commercialrefrigeration for current incentives.

1.0 Warranties and agreements

- 1.1 The Applicant warrants that all Products fully qualify and comply with Appendix A - Program Eligibility Criteria.
- 1.2 The Applicant warrants that all information contained in the Application is true and correct. The Applicant undertakes to advise EM immediately should there be any change to information contained in the Application form during the Applicant’s participation in the Program. Changes to information contained in the Application may affect eligibility under the Program and Incentive amounts.
- 1.3 The Applicant warrants and agrees that: i) he/she has read Appendix A - Program Eligibility Criteria for this Program and the Applicant and that the project fully qualifies to participate in the Program; ii) the Application and all matters and materials relating thereto (including, without limitation, all products, equipment and materials installed by the Applicant) fully qualify and comply with the Program Eligibility Criteria; and iii) he/she has the full authority to provide to EM the Application and all information and documents in relation to this Agreement and that all information and documents are and shall be correct, current, and complete.
- 1.4 The Applicant agrees to the terms and conditions of this Agreement and shall comply with same, together with all Program requirements, unless specifically waived by EM in writing. If the Applicant fails to comply with this Agreement or any other requirement of EM made pursuant these terms and conditions, including without limitation if the Applicant ceases to be the Manitoba Hydro (“MH”) account holder for the building specified on the Application, then upon notice from EM, any Incentive then-unpaid to the Applicant shall be cancelled and any Incentives paid to a Applicant who was in violation of this Agreement as at the payment date of the Incentive shall immediately repay the Incentive to EM.
- 1.5 EM decisions relating to the Applicant, Application, the Product eligibility, energy savings of the Products, the amount of Incentives, or other issues relating to the Program will be final and binding on all parties and not subject to appeal.
- 1.6 The standard maximum eligible Incentive per upgrade is \$100,000 unless otherwise agreed to by EM in writing.
- 1.7 EM reserves the right to change or terminate the Program at any time in its discretion without notice. In-process applications may be subject to cancellation should the Program be terminated. Incentive amounts are subject to change without notice and are not confirmed until the time of issuance.
- 1.8 EM reserves the right to limit the number of Program participants in its discretion, including where an Applicant or Product would otherwise qualify under the Program.
- 1.9 This Application may be executed in any number of counterparts, including counterparts signed by fax, emailed scan-copy or, by electronic signature when submitted through an EM Applicant user account. Where signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. A photocopied and/or fax copy of this Agreement bearing the signature of each party or an electronic copy of this Agreement having been agreed to electronically through an EM Applicant user account and approved by EM shall be deemed an original execution version of this Agreement. Applicant is responsible for all activity through the EM Applicant user account.
- 1.10 This Agreement shall be governed by and construed in accordance with the laws of Manitoba and the applicable laws of Canada without regard to Manitoba or federal Canadian law governing conflicts of law, even if one or more of the parties to this Agreement is resident of or domiciled in any other province or country. The parties hereby irrevocably attorn to the exclusive jurisdiction of the Court of Queen’s Bench of Manitoba, Winnipeg Centre.

2.0 Installation requirements

The Applicant shall ensure that:

- 2.1 The Products must meet the requirements set forth in the Appendix A - Program Eligibility Criteria and be acceptable to the inspection authorities having jurisdiction.
- 2.2 The Products must be installed and operational in the building as specified on this Application within 12 months of the date EM has given the approval for work to proceed.
- 2.3 The Applicant agrees to keep Products in place in the building identified this Application and as installed for a period of at least 36 months following installation.
- 2.4 The Applicant agrees to allow periodic inspections of the premises in this Application by EM or its representatives/designates, during normal business hours, any time from the date of the Application until 36 months after Product installation.

3.0 Approvals and supporting documentation

- 3.1 EM's approval for Incentives under this Program relates to the Applicant's Program participation only and should not be interpreted to constitute consents, permits or other approvals required for necessary installation or construction associated with Program participation. The Applicant shall obtain all necessary consents, permits, certificates and other such approvals required by applicable laws, building codes and standards to carry out the purchasing, installation, constructions, or use of Products under the Program.
- 3.2 EM reserves the right to, at any time, request and verify that the Products have been installed in accordance with this Agreement, including without limitation by way of the Applicant supplying EM with itemized invoices and documentation which must detail the following: contractor(s)/installer(s)/vendor(s)/manufacturer name, address(es), phone and invoice numbers; purchaser name and address where installed; date of purchase; manufacturer make(s), model number(s) and quantities; itemization of costs. permits, certificates, and invoice numbers; occupant name(s) and address(es), details on design and construction; and an itemization of costs and accuracy of cost information of the Products. The Applicant shall, as necessary, provide consents and authorizations, including without limitation, to its Contractor/Installer and Vendor or otherwise as necessary to provide for direct communication with EM for these purposes.
- 3.3 A Completion Declaration must be submitted before the Incentive can be paid.
- 3.4 Approval of an Incentive does not constitute electrical inspection approval. When applicable, an electrical permit number, Certificate of Inspection (within Winnipeg) or Certificate of Approval (outside of Winnipeg), must be submitted before the Incentive can be paid.

4.0 Tax implication

- 4.1 Applicant is solely responsible for payment of any and all tax liability imposed on the Applicant as a result of the receipt of any Incentive payment; EM will not be responsible for any tax liability imposed on the Applicant as a result of any payment of the Incentive. GST Registrants: Incentives include GST.

5.0 Liability

- 5.1 EM will have no right, title or interest in the Products/building/facility by virtue of the Applicant's participation in the Program or the payment of any Incentive hereunder.
- 5.2 EM, not being the designer, manufacturer, nor installer of the Products, nor a designer, builder, or developer of buildings, makes no representation or warranty, express or implied, as to the fitness, quality of design practices or capability of the Products or its installation, workmanship, or use, nor warrants that the Products will satisfy the requirements of any law, rule, code, specification, or contract.
- 5.3 The Applicant hereby indemnifies and saves harmless EM, its directors, officers, agents, and employees from all damages, expenses, and costs for injury or death of any person, damage to or destruction of property, and all economic loss suffered by any person caused by installation or use of the Products.
- 5.4 The Applicant assumes all risk and responsibility for selection, installation and use of any Products and any construction associated therewith, as well as any damages, injury, or costs that may result from the installation or use of the Products.
- 5.5 EM does not endorse any particular consultant, manufacturer, product, system, design, contractor, supplier, designer, developer, builder, tool, or installer in promoting this Program.

5.6 The Applicant acknowledges and agrees that they are solely responsible for the disposal of all hazardous materials (including, without limitation, PCB's) that may be contained in the Products, and that they shall do so strictly in accordance with all applicable laws, government regulations and requirements, and agrees that EM has no responsibility or liability with respect to any such disposal.

Appendix A - Program Eligibility Criteria

To qualify under the Program, the following Program Eligibility Criteria must be met:

General eligibility

- (a) The Applicant must be the owner or designated representative (e.g., property manager) of the building to receive an upgrade under the Program of qualifying energy-efficient Products;
- (b) The Applicant must be a MH account holder eligible for MH commercial general service electricity rates and MH commercial service natural gas rates. Buildings must be heated primarily by electricity or natural gas supplied by MH in order to be eligible under the Program; buildings heated primarily by any other fuel source will not be eligible.
- (c) The Products shall be used by the Applicant in a commercial, industrial, or agricultural capacity only and in accordance with the Applicant's application and this Agreement;
- (d) Incentives under the Program are for renovation projects only; incentives are not available for projects in-progress or already completed prior to approval of an Applicant's application; Not applicable for Evaporator Efficiency Controllers.
- (e) Products which have received financial assistance under any other federal, provincial or MH or EM energy conservation program may not be eligible for this Program, unless otherwise agreed to by EM in writing. Applicant shall make full disclosure of same as part of the Application and shall provide further information and/or documentation to EM upon request for consideration by EM;
- (f) EM must be notified in writing of any changes to the building design that affects the original application otherwise the Products may be determined by EM to be ineligible for the Incentive. Changes to building design and/or Products after application submission and Program approval may affect Incentives and Program Eligibility Criteria as determined by EM; and

Commercial refrigeration eligibility

- (g) The Applicant must be the end user of the Products (i.e. not a refrigeration vendor, manufacturer or installer).
- (h) Refrigeration Products must be new, CSA approved, when applicable, or certified by an accredited independent organization, to conform to CSA standards.
- (i) When applicable, Refrigeration Products must meet the requirements of the Manitoba Electrical Code, all pertinent bylaws and shall be acceptable to the inspection authorities having jurisdiction. An electrical permit and certificate of approval is required.
- (j) Lighting measures under this program that will operate less than 2,000 hours per year are not eligible for Incentives.
- (k) Lighting measures under this program must adhere to Illuminating Engineering Society (I.E.S.) recommendations, guidelines, and calculation procedures. This is the responsibility of the Applicant.
- (l) Products, equipment and their applications and installations, must meet or exceed energy efficient regulatory requirements in Manitoba, as EM, in its sole discretion, may determine.
- (m) EM reserves the right to limit the Incentive to not more than the incremental product costs for the Applicant for the energy saving upgrades over and above the base case.
- (n) Refrigeration Products must meet the specific requirements and measures contained within the attached MEASURE DESCRIPTIONS to be considered eligible for an Incentive.