

In consideration of Efficiency Manitoba permitting the Supplier to participate in one or more of Efficiency Manitoba's Programs, the Supplier and Efficiency Manitoba agree to the following terms and conditions:

Terms and Conditions

1. **Customers.** Customers to which the Supplier provides services in connection with this Agreement shall at all times also remain the customers of EM. The Supplier shall enter into a separate contract in writing directly with eligible and approved EM customers for the delivery of goods and services by Supplier to approved EM customers under a Program as required to meet the Supplier's responsibilities under this Agreement. EM shall not be a party to Supplier's contract with EM's customers, however, it is a condition of this Agreement that the Supplier provide detailed information to EM regarding any products or services delivered to any such customer by Supplier as part of the Program in accordance with scheduled reporting requirements. EM reserves the right to communicate with any of its customers at any time, regardless of their involvement or contracting with the Supplier.
2. **Supplier to contract with third party.** The Supplier acknowledges and agrees that it shall not act in the capacity of Supplier under this Agreement for the supply of products or services to it under any EM Program where it is the customer/incentive recipient under that Program Application. The Supplier shall, for certainty, contract with an arm's-length third party EM-approved supplier for products or services to be delivered to it under any EM Program where it is the customer.
3. **Responsibilities.**
The Supplier shall:
 - a) Process EM Program applications with customers in accordance with Program requirements, procedures, and terms and conditions set out by EM in writing to Supplier from time to time, for the applicable Program(s) (hereinafter the "Procedures");
 - b) Perform and comply with all Supplier obligations pursuant to the Program(s) including, without limitation, those arising from Procedures in relation to all Program applications processed by the Supplier;
 - c) Provide services and products to EM-approved customers participating in Program(s), in accordance with the terms and conditions of this Agreement, in a timely, competent, honest, and professional manner, and the Supplier shall ensure, using best professional judgment and standards, that any and all services and products provided to each of the customers must be suitable, sufficient, effective, and safe, for the customer and their property;
 - d) Comply with all applicable federal, provincial, municipal, state or other applicable laws, by-laws, regulations, and codes, which are, or may hereafter become, applicable to this Agreement and/or any of the Supplier's obligations hereunder or pursuant to any Program, and ensure that all authorization, permits, licenses, and clearances, are secured and active prior to and throughout the provision of services and products to any customer;
 - e) Provide coverage for personnel providing products and/or services, with limits as required by statute and/or regulation relating to personnel related injury, including, without limitation, those pursuant to The Workers Compensation Act, R.S.M. 1987, c. W200; and
 - f) Be responsible for any breach of any requirement or obligation pursuant to this Agreement by it or any person or legal entity (including, without limitation, subcontractor) for whom the Supplier is responsible. Supplier shall in no event directly or indirectly cause, participate in, or condone, any form of unethical or unfair conduct, fraud or misrepresentation, conflict of interest (anticipated, actual, or perceived), corruption or other illegal practice, and shall conduct itself professionally, honestly, and fairly, in the performance of its obligations and activities.
4. **No Misleading.** The Supplier shall at all times during the Term of this Agreement represent itself only as a registered supplier of EM under an identified Program. For certainty, Supplier shall not at any time represent itself as a representative or agent of EM, or that it has the authority to bind EM to any contract or term at law. Further, the Supplier shall not represent or in any way infer to any customer or third party that EM has otherwise approved or endorsed the Supplier or any specific products, services, or the quality thereof, pursuant to any Program or otherwise.
5. **No License.** The Supplier shall not use or adopt any intellectual property that is confusingly similar to any intellectual property owned or controlled by EM during the Term of this Agreement. The Supplier is not entitled to use, display or distribute any intellectual property owned or controlled by EM, including in connection with the Program or the delivery of products or services to customers; no right or license to any EM intellectual property is granted to Supplier by EM by virtue of this Agreement except as expressly provided herein. Without restricting the generality or application of the foregoing, the Supplier is prohibited from reproducing, using, modifying, or otherwise referencing or displaying, any trademark or copyrighted/copyrightable work owned or controlled by EM in any manner unless expressly pre-authorized in writing by EM.
6. **Term.** The term of this Agreement shall commence as at the time of mutual execution of this Agreement by both parties, and shall continue in force and effect until terminated by either party in accordance with this Agreement (the "Term").
7. **Suspension and Termination.**
 - a) Each party may, at its sole option, immediately terminate this Agreement at any time by written notice to the other party.
 - b) In addition, without prejudice to any other rights or remedies available hereunder or at law or equity, EM may, at its sole discretion and option, immediately suspend or terminate this Agreement by written notice to the Supplier if:
 - i) EM receives or becomes aware of any complaint from any customer or other third party regarding the Supplier, or that the Supplier, in EM's sole determination, fails to satisfy any requirement(s) of any customer or to serve the interest of any customer;
 - ii) the Supplier provides any application, information, or materials, that EM determines to be insufficient, false, inaccurate, misleading, fraudulent, or contrary to EM's objective(s), intent, or interest, of any Program(s); or
 - iii) the Supplier has failed, in EM's sole determination, to comply with any term or condition of this Agreement, any Procedure or other requirement(s) of any Program(s), or any other requirement or direction of EM.
 - c) This Agreement shall terminate automatically and immediately in the event that the Supplier becomes bankrupt or insolvent, or otherwise ceases to conduct business.
 - d) In the event that a majority of the Supplier's asset or equity is sold or otherwise transferred to another legal entity, the Supplier shall promptly notify EM in writing and request EM's written consent for continuance of this Agreement, failing receipt of written consent from EM this Agreement shall terminate automatically and immediately as at the date of the sale or transfer of the asset or equity.
 - e) Upon expiry or termination of this Agreement, the Supplier shall immediately cease processing Program applications and shall return all program forms and materials in relation thereto to EM.
 - f) The expiry or termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement or such part hereof prior to the time of expiry or termination, and those rights and obligations shall survive the expiry or termination of this Agreement or part hereof. Notwithstanding any other term or condition of this Agreement to the contrary, Articles 5, 7, 9, 10, 13, 14, 17, and 18, hereof, and all other provisions of this Agreement necessary to give effect thereto, shall survive the expiry or termination of all or any part of this Agreement.
 - g) Any termination of this Agreement by EM as provided in this Article 7 shall be final and binding on the Supplier and shall not be subject to appeal.
8. **Warranty and Representation.**
The Supplier represents and warrants that:
 - a) The Supplier has full power and authority to enter into and perform this Agreement which constitutes a legal, valid and binding obligation of the Contractor enforceable against it in accordance with the terms hereof.
 - b) The Supplier is a corporation in good standing incorporated under the laws of Manitoba or under the laws of Canada, and the Supplier shall have an active valid registered business number.
 - c) All information and materials provided to EM are current, accurate, and complete.
 - d) The Supplier possesses all required personnel, expertise, training, certifications, resources, experience, equipment, materials, and liability coverage, to effectively perform its obligations under this Agreement.

9. Personal Information and Privacy.

With respect to Personal Information collected by a Supplier in relation to a Program, the Supplier shall:

- a) collect, use, disclose, administer, and retain/destroy such Personal Information in accordance with all applicable laws and regulations including, without limitation, the Personal Information Protection and Electronic Documents Act.
 - b) not use such Personal Information for any purpose other than for the processing of a Program application and as necessary for providing the Supplier's services or products thereunder.
 - c) treat as confidential all Personal Information and shall not disclose any Personal Information to any third party without the prior written consent of the customer.
 - d) have in place at all times during the Term and thereafter safeguards sufficient to protect any and all Personal Information from and against unauthorized access, collection, use, disclosure and destruction.
 - e) comply with the provisions of The Freedom of Information and Protection of Privacy Act of Manitoba which binds EM as a public body of Manitoba.
- For the purposes of this Agreement, "Personal Information" shall have the meaning(s) as defined by applicable legislation, which includes, without limitation, an individual's name, address, telephone number, facsimile number, email address, information about the individual's education, employment or occupation, source of income or financial circumstances, activities or history.
10. **Program Documentation.** The Supplier shall, within 120 calendar days of submitting the final paperwork for a particular customer application under a Program, attend to destruction of the Supplier's copy of the completed Program form(s) by shredding or other secure method and be prepared to certify same in writing to EM upon EM's request.
 11. **Incentive upon Completion of Customer Work.** Upon the Supplier's and customer's compliance with the Procedures and fulfillment of all requirements of EM for a given Program application, EM may then issue the corresponding Program incentive, as determined by EM, for and pursuant to that application.
 12. **Supplier Identity.** The Supplier shall use its full legal name in all notices and correspondence with EM and in connection with any EM customers, and the Supplier shall also promptly notify and update EM in writing of any of its operating name(s), mailing address or email address, if different.
 13. **Reference to Participants.**
 - a) Identification – Supplier shall be identified as a registered participating supplier offering Efficiency Manitoba programs (while following the Supplier Advertising Guidelines).
 - b) Directory listing – inclusion of any one or more of your business name, logo, and contact information on Efficiency Manitoba's publicly available directory/listing of registered Suppliers.
 - c) Promotion references – reference in specific Supplier network promotional materials, including internal and external communications, issued by Efficiency Manitoba from time to time. Efficiency Manitoba will use reasonable efforts to provide advance notice of the timing and particulars of such promotions.
 14. **Disputes.** The Supplier shall be solely responsible for all services and products, provided to any customer. EM will not act as a mediator in disputes between a Supplier and a customer in relation to a Program application or any Supplier services or products provided in relation thereto.
 15. **Insurance.** The Supplier shall at its own cost and expense provide and maintain insurance in such amounts and coverage as are reasonable taking into consideration the nature and extent of the services and products of the Supplier. Such insurance shall include coverage for bodily injury, personal injury, death, professional liability, and property damage. Insurance policies shall be endorsed to provide EM with not less than 30 days written notice in advance of cancellation and to show EM as an additional insured. The Supplier shall be responsible for any deductible amounts under the said insurance policies, and shall, upon request by EM, provide certificates of insurance.
 16. **Independent Contractor.** The Supplier is an independent contractor. Except for the processing of applications for Programs on behalf of EM, no relationship of agency, partnership or joint venture exists between the parties. The Supplier has no authority to bind EM or to incur any obligations on its behalf without the prior written authorization of EM.
 17. **Liability.** In no event shall EM be liable to the Supplier, or to the Supplier's directors, officers, employees, agents, subcontractors, or customers (actual or prospective), for any losses, costs, damages or expenses that the Supplier, or any of the aforementioned person(s), may suffer or incur as a result of the Supplier's participation or otherwise involvement in any Program including, without limitation, for direct, indirect, special or consequential damages including loss of revenue or lost profit, whether based in contract, tort, including without limitation negligence, equity or otherwise.

18. **Indemnity.** The Supplier shall indemnify and save EM harmless from and against any and all manners of action, causes of action, losses, costs, damages, expenses, suits, claims, liabilities, debts and demands which EM may suffer or be put to, or which may be brought or made against EM by any third party (including, without limitation, any customer(s)), relating to or arising out of any product(s) or service(s) of the Supplier in connection with this Agreement, any action or inaction of the Supplier or its directors, officers, employees, contractors, subcontractors (through every tier), agents, or any other person(s) for whom the Supplier is responsible, or any breach of this Agreement, or the negligence or misconduct of Supplier or its directors, officers, employees, contractors, subcontractors (through every tier), agents, or any other person(s) for whom the Supplier is responsible.

19. Notices.

Any notice or other communication required or permitted to be given under this Agreement must be in writing and shall be given by personal service, facsimile transmission, electronic transmission or letter sent by registered mail to:

- a) For EM: to EM's address set out at the commencement of this Agreement;
 - b) For the Supplier: to the Supplier's address set out at the commencement of this Agreement, or such other address as such party may notify the other of in writing.
- Notices sent by registered mail shall be deemed to be received 5 days after the date of mailing. Notices given by personal service or by facsimile transmission shall be deemed to be received on the date on which such notice was delivered or sent. Notices sent by electronic transmission shall be sent through the EM user portal to the email address specified in your account information. In addition to the foregoing, EM may communicate with the Supplier at any time via any form, format, and medium (including without limitation electronic mail and social media) to provide information respecting EM's program(s), product(s), service(s), and/or energy efficiency, and the Supplier hereby expressly consents to such communication(s) by EM.

20. **Assignment.** The Supplier shall not assign this Agreement or any of the rights or obligations hereunder without the prior written consent of EM. EM shall have the right to assign this Agreement, and all rights and obligations hereunder, to any third party at any time without prior notice, and the Supplier hereby expressly consents to such assignment by EM.

21. **Waiver.** A waiver of any right under this Agreement on the part of either party shall not be deemed to be a waiver of any other right, and a waiver of any right in any one instance shall not be deemed to be a waiver of that right in any other instance.

22. **Severability.** If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement and the other provisions of this Agreement shall continue in full force and effect as though the invalid provision had never been included in this Agreement.

23. **Amendment.** Any amendment to this Agreement must be in writing signed by each of the parties.

24. **Governing Law and Forum.** This Agreement shall be subject to, interpreted, performed and enforced 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 the Agreement may be 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.

25. **Enurement.** This Agreement shall be binding upon, and enure to the benefit of the parties hereto and their respective permitted successors and assigns.

26. **Entire Agreement.** This Agreement constitutes the entire agreement between the Supplier and EM with respect to the subject matter hereto and supersedes all previous communications, understandings and other agreements, whether written or oral, in relation thereto.

27. **Execution.** This Agreement may be executed in any number of counterparts, including counterparts, originally signed or signed by facsimile or electronic signature, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. A photocopied, scanned, and/or fax copy of this Agreement bearing the signature of each party, in a single document or counterparts thereof as provided herein, shall be deemed an original execution version of this Agreement.

28. **Indigenous Business.** Refers to a business:

- a) registered to do business in the Province of Manitoba, and the firm, or its principals, maintain their facilities, equipment, and staff in Manitoba on a continuous basis;
- b) which is at least 51 percent owned and controlled by Indigenous Person(s) and,
- c) where, if the business has six or more full-time staff, at least one-third of the staff are Indigenous Persons.