

Commercial New Construction Performance Program terms and conditions

Terms and conditions

1. Energy conservation measure requirements

- a. **General.** This program is offered by FortisBC Energy Inc. and FortisBC Inc. (collectively, "FortisBC"). FortisBC provides incentives towards the cost of the implementation and/or installation of energy-efficient measures as part of the design and construction of a new building which result in the building exceeding minimum energy performance levels required by the British Columbia Building Code. To be eligible for incentives, the building must have at least two of the following three end uses supplied by FortisBC energy: (i) space heating; (ii) ventilation; and/or (iii) domestic hot water heating. Additional criteria may apply for electrically heated buildings that use FortisBC natural gas for ventilation and domestic hot water. Please see fortisbc.com/newconstructionfunding for more information.
- b. **Energy Model.** Determination of the energy performance levels achieved will be based on the descriptions, analysis and assessments contained in the detailed Energy Model and Energy Model supporting documents approved by FortisBC (collectively, the "Energy Model") that identifies measures that will reduce natural gas and/or electricity consumption within the building. The Energy Model must be prepared on behalf of the Participant by a qualified professional engineer. The Participant will provide an updated Energy Model to FortisBC for approval to recalculate the performance levels if:
 - i. targeted performance levels set out in the approved Energy Model are or will not be achieved; or
 - ii. any energy-efficient measures included in the approved Energy Model are not installed or implemented, or are modified, substituted or replaced; or
 - iii. upon reasonable request by FortisBC, including as a result of FortisBC observations during any site visits. FortisBC may, in its sole discretion, rescind approval or funding or recalculate the incentive based on such changes.
- c. **Compliance.** All products, materials and/or equipment installed as part of energy-efficient measures must be new, CSA-approved or certified by a recognized accredited independent organization and properly installed and operated in accordance with manufacturer's instructions and all applicable laws, orders, regulations, ordinances standard, codes and other rules, licenses and permits of all lawful authorities. HVAC and control redesigns should adhere to applicable ASHRAE guidelines and calculation procedures. Energy-efficiency measures must meet or exceed the requirements of the *Energy Efficiency Act* (British Columbia) and the *Energy Efficiency Act* (Canada) and any applicable regulatory requirements in British Columbia, as determined by FortisBC, in its sole discretion.
- d. **Costs.** The Participant is responsible for all commitments and costs for the Energy Model, the building/development and the installed measures, including any changes and cost overruns.
- e. **Key dates.**
 - i. The Participant must submit its completed and signed application for participation in the program (the "Application") and the Energy Model to FortisBC in the early stages of building design and in any event prior to the commencement of construction of the building.
 - ii. The building must be completed, and occupancy permit issued, within 5 years of the Participant submitting the program application letter to FortisBC in the form provided by FortisBC.

2. **Site visits.** The Participant will provide FortisBC access to the building during business hours upon reasonable notice to enable FortisBC to confirm installation and operation of the energy-efficient measures in accordance with the Energy Model and to verify compliance with program terms and conditions.

Payment terms and conditions

3. Amount of funding

- a. **Calculation of incentive.** Subject to reduction or repayment pursuant to sections 1(b) (*Energy Model*), 3(b) (*Third Party Funding*) and 5(d) (*Repayment*), the incentive payable to the Participant will be calculated by FortisBC in the manner set out in the Project

Application Letter, and in the amount set out in the Incentive Commitment Letter, both as issued by FortisBC to the Participant.

- b. **Third party funding** Participation in this program does not preclude the Participant from applying for or receiving contributions from other sources towards the building's energy efficiency ("**Third Party Funding**"), provided that, if the Participant applies or accepts Third Party Funding, the Participant will promptly notify FortisBC. FortisBC in its sole discretion may adjust funding or request repayment of program incentives, the Participant should comply within 30 days of request by FortisBC.

4. Conditions of funding

a. Conditions - general.

- i. Payment of incentives is subject to: (i) the Participant and the building meeting the eligibility requirements and these terms and conditions; (ii) targeted performance levels, as set out in the Energy Model, being achieved; (iii) FortisBC's receipt, review and approval of all required deliverables; and (iv) satisfactory site visits.
- ii. At the time of funding, the Participant must be:
 - a customer of FortisBC in good standing; and
 - the owner and/or developer of the building.
- iii. FortisBC may, in its sole discretion, refuse to pay any incentive, recalculate the amount of incentive, terminate the Participant's participation in the program, and/or require the Participant to immediately repay all or part of any incentive paid, if FortisBC, in its sole discretion, determines:
 - information provided by the Participant, including as contained in the Energy Model, is incorrect or incomplete; or
 - the Participant or the building are not eligible for the program or the Participant has not provided satisfactory proof of eligibility; or
 - targeted performance levels have not been, or cannot be, achieved; or
 - the Participant does not permit access to the building to conduct site visits; or
 - the Participant has not otherwise complied with the terms and conditions.

- b. **Deliverables.** The Participant must submit the following to FortisBC, all subject to FortisBC's satisfaction and approval, no later than **60 days** after the building's occupancy permit has been issued:

- i. proof of payment of final progress draw;
- ii. updated Energy Model, if applicable;
- iii. if requested by FortisBC:
 - equipment shop drawings, installation permits, start-up reports, and the results of any commissioning tests;
 - inspection activity reports and final acceptances by building inspectors and/or Technical Safety BC; and
 - any other applicable permits.

5. Payment and repayment

- a. **Payment.** FortisBC will pay the incentives in the following manner:
 - i. 10% of the Capital Incentive, up to a maximum of \$25,000, as determined by FortisBC and set out in the Incentive Commitment Letter issued by FortisBC (the "Post-Model Capital Incentive") within **90** days of issuance of the Incentive Commitment Letter; and
 - ii. Energy Model Incentive as set out in the Incentive Commitment letter will be paid upon the FortisBC review and approval of the Energy Model and receipt of associated invoice or progress draw from Participant.
 - iii. Mid- and/or Post-Completion Air Tightness Incentive, if applicable, as set out in the Incentive Commitment Letter will be paid upon receipt of proof of air tightness testing and associated invoice or progress draw from Participant.
 - iv. the Capital Incentive, less the Post-Model Capital Incentive, in the amount calculated by FortisBC and set out in the Incentive Commitment Letter issued by FortisBC, upon FortisBC being

satisfied, in its sole discretion, that the conditions of funding set out in section 4 (Conditions of Funding) have been satisfied.

- b. **Form of payment.** FortisBC will issue payments by cheque, in name of, and mailed to, the Participant. FortisBC is under no obligation to re-issue a payment which has been returned as undeliverable or to replace a stale-dated cheque.
- c. **Taxes.** The Participant is responsible for any applicable tax on funding. Payments cannot be assigned without the prior written consent of FortisBC, which consent may be arbitrarily withheld.
- d. **Repayment.** In addition to repayment obligations set out in section 4(a) (*Conditions of Funding*), if, at any time after the issuance of the occupancy permit and for three (3) years thereafter (the "Minimum Operating Period"):
 - i. the Participant ceases to be a FortisBC gas customer with respect to the premises; or
 - ii. an energy-efficiency measure included in the Energy Model ceases to operate, ceases to be used for its intended purpose, or is removed;the Participant shall make a pro rata repayment of funding to FortisBC calculated based on the number of months or partial months remaining in the Minimum Operating Period within **90 days** of such triggering event.

General terms and conditions

6. **Program changes.** FortisBC may amend or terminate the program and these terms and conditions at any time and for any reason without notice. In such event, FortisBC shall be under no obligation to pay any funding or further funding to the Participant. Dates are subject to change. Amount of available funding may be limited.
7. **Limitation of liability and indemnity.**
 - a. The Participant acknowledges and agrees that:
 - i. FortisBC, not being the designer, manufacturer, supplier or installer of energy efficiency measures, makes no representation or warranty whatsoever regarding any efficiency measures or their installation or operation, including but not limited to, implied warranties or conditions of merchantability, merchantable quality, necessity, durability, fitness for a particular purpose, compliance with laws, energy efficiency/savings, title, and non-infringement, or the skill of any contractor. FortisBC accepts no liability or responsibility for any equipment, services, use of any contractor or any efficiency measure.
 - ii. FortisBC does not assume any liability for any damages, claims, losses or expenses incurred by the Participant with respect to the efficiency measures or the Participant's participation in the program.
 - iii. FortisBC is not responsible for any costs incurred by the Participant for its participation in the program or attributable to the efficiency measures.
 - b. The Participant does hereby indemnify and save harmless FortisBC and its affiliates, and their respective directors, officers, agents, contractors and employees, from all liability, damages, claims, demands, expenses and costs for claims, costs for injury or death of any person (including from any infectious disease outbreaks), damage to or destruction of property, and all economic loss suffered by any person (collectively, "Losses") arising from or occurring by reason of the Participant's participation in the program and/or the implementation of any program recommendations, including the

installation and/or use of recommended products and improvements. The Participant irrevocably waives any and all claims against, and irrevocably releases and agrees not to sue, FortisBC and any of their respective officers, directors, employees, agents, contractors or representatives for and against all Losses arising from Participant's participation in the program and/or the implementation of any program recommendations, including the installation and/or use of recommended products and improvements.

- c. This section will survive termination of this agreement.
8. **No approval or endorsement.** FortisBC does not approve or endorse any particular consultant, manufacturer, product, system, design, contractor, supplier or installer in promoting this program.
9. **No relationship.** Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the FortisBC and the Participant for any purpose.
10. **Binding decisions.** The determinations and decisions of FortisBC are final and binding. FortisBC may, upon request from the Participant, provide reasons for its determinations and decisions, but is under no obligation to do so.
11. **Marketing and promotion.**
 - a. The application hereby consents to FortisBC identifying the Participant's involvement in the program, and publishing the Participant's business name, a general description of the efficiency measures and resulting energy performance and payback period, to promote the program in various forms of media. The Participant will be entitled to review and approve any promotional material prior to publication, such approval not to be unreasonably withheld, conditioned or delayed.
 - b. The Participant will acknowledge the funding received in all publications, publicity material, release and other forms of communication pertaining to the Participant's participation in the program. All such communications must be submitted to and approved in writing by FortisBC prior to publication.
12. **Use and disclosure of Information.** The Participant acknowledges, consents and agrees FortisBC may:
 - a. contact the Participant to administer, verify compliance with, and evaluate the program, and to obtain information and conduct surveys;
 - b. **collect** and use information (including personal information as defined in the *Personal Information Protection Act*), whether provided by the Participant, obtained during site visits, contained in, or forming part of, any documents submitted as part of the program or generated by FortisBC as part of the Participant's participation in the program, and disclose the information to employees, affiliates, contractors, representatives, agents, funding partners and program partners to verify eligibility, process, manage, administer, audit, evaluate and report on the program, the incentives and the Participant's participation, to monitor, audit and assess compliance with these terms and conditions, and to develop other energy conservation programs;
 - c. retrieve account data, including billing, energy use and consumption, for a period of **three (3) years** after payment of the incentive to evaluate consumption behavior and to collect, use and disclose such account data pursuant to (b) above.

FortisBC collects, uses and discloses personal information in accordance with the *Personal Information Protection Act* and its Privacy Policy (see fortisbc.com/privacy).