

PROGRAM ALLY TERMS AND CONDITIONS

April 2024

The following Program Ally Terms and Conditions overviews the terms and conditions that a MCCAC Program Ally must adhere to when delivering energy audits.



**Municipal
Climate Change
Action Centre**

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1.0 Introduction

Established in 2009, the Municipal Climate Change Action Centre is a collaborative initiative of Alberta Municipalities, Rural Municipalities of Alberta and the Government of Alberta. The MCCAC provides funding, technical assistance, and education to support Alberta municipalities and community-related organizations with climate resilience, renewable energy, energy efficiency, and energy management solutions. Alberta Municipalities is the lead delivery agent and legal authority for MCCAC.

Municipalities can receive rebates for energy audits that support investment decisions through various MCCAC programs. Energy audits must be completed by approved Program Allies. To be considered a Program Ally, prospective Program Allies must meet the Program Ally Onboarding Requirements and must always adhere to these Program Terms and Conditions.

2.0 Definitions

The following terms have the following meanings in throughout the Terms and Conditions;

- (a) **“Program Ally”** is a contractor, business or individual who has met the requirements outlined in the Program Ally Terms and Conditions and Onboarding Requirements and can complete Energy Audits through a respective MCCAC Program;
- (b) **“Program Ally Escalation Framework”** describes program management processes for resolving issues regarding MCCAC Program Ally conduct that arise during Program Participation;
- (c) **“Terms and Conditions”** means this Program Ally – Terms and Conditions;
- (d) **“Confidential Information”** has the meaning set forth in Section 7(b);
- (e) **“Energy Audit Requirements”** outlines the requirements that Program Allies must adhere to when completing energy audits through a respective MCCAC program, including the methodology and requirements for the quantification of project energy savings and greenhouse gas emissions reductions;
- (f) **“MCCAC”** means Municipal Climate Change Action Centre;
- (g) **“Participant”** means a municipality who satisfies the respective MCCAC Program Application Requirements outlined in the respective Program Guidebook. Each Participant that satisfies the eligibility requirements of the Program is considered to be a Participant;
- (h) **“Personnel”** means all personnel involved in the development and/or provision of services and/or deliverables hereunder, whether they are employees, subcontractors or other agents of the Program Ally engaged in Program eligible Work;
- (i) **“Program Allies Directory”** is the list if Program Allies who have met the Program Ally Onboarding Requirements and are eligible to work with Participants through a respective MCCAC Program
- (j) **“Program Ally Onboarding Requirements”** are the requirements that all prospective Program Allies must meet to meet to be consider a Program Ally.
- (k) **“Respective MCCAC Program”** means either the Community Energy Conservation (CEC) Program or Municipal Energy Manager (MEM) Program. Approved Program Allies can complete energy audits through either Program.
- (l) **“Work”** means all services and compliance processes to be completed by the Program Ally on behalf of or Participant, as part of a respective MCCAC Program.

3.0 Program Ally Terms and Conditions

Program Allies will:

- (a) maintain membership within the Program Ally Directory in good standing, and request the same of any subcontractors;
- (b) treat Program Participants fairly and deliver promised products and Work in a timely and responsible manner;

- (c) adhere to the following customer service requirements:
 - (i) provide responses within two (2) business days for phone and email inquiries. If unable to fully respond within two (2) business days, the Program Ally must provide an estimate of the time needed to fully respond, based upon the complexity of the inquiry;
 - (ii) honour scheduled appointments. When unable to attend scheduled customer appointments, the Program Ally should notify the customer in a reasonable amount of time before the scheduled visit; and
 - (iii) develop clear job proposals that encompass all involved costs including performance and savings claims, and projections, if applicable;
- (d) properly represent the relationship of the Program Allies to the MCCAC. The Program Ally must explicitly disclose to each Program Participant that it is an independent business and is in no way endorsed or certified by MCCAC;
- (e) not represent itself as being employed, certified, or approved by MCCAC;
- (f) notify the MCCAC of any changes to its GST number or legal business name;
- (g) promote, in good faith, positive participation in the respective MCCAC Program among Participants and the public;
- (h) conduct all aspects of business that touch on consumers or their interests without any unfair, deceptive, or abusive acts or practices;
- (i) regularly examine and consider the possibility of unfair, deceptive, or abusive acts or practices violations in all aspects of its business that touch on consumers or their interests, including but not limited to marketing, sales, origination, contract terms, contract options, disclosure requirements, installation, servicing, and loss mitigation;
- (j) only offer, perform, and accept responsibility for services and assignments that the Program Ally is qualified and competent to perform, based on their training and experience;
- (k) provide clients with adequate information about the proposed products or services, including any relevant risks;
- (l) provide feedback to the MCCAC staff on issues pertaining to Program design, administration, or any other experiences with the Program in general; and
- (m) communicate openly and respectfully with MCCAC staff to seek assistance as needed in technical or administrative areas pertaining to Program participation, or to respond to requests from Program staff as required.

4.0 Program Ally Obligation

- (a) A Program Ally must always act in full compliance with all applicable federal, provincial and municipal laws regarding truth in advertising, consumer protection, contract law, health and safety, and other relevant regulations within their professional practices.
- (b) Nothing in the Terms and Conditions affects the obligation of a Program Ally, or any representatives it appoints to act on its behalf, to comply with all applicable federal, provincial, and municipal laws.
- (c) The requirements set out in these Terms and Conditions apply in addition to any other requirements imposed by law, whether dealing with the same subject matter or otherwise, including the requirements of the *Consumer Protection Act* and the *Direct Selling Business Licensing Regulation* and the *Direct Sales Cancellation and Exemption Regulation* and the *Designation of Trades and Businesses Regulation* and the *Prepaid Contracting Business Licensing Regulation*.
- (d) A Program Ally must have read and understood the *Consumer Protection Act* as it relates to its business and the delivery of the respective MCCAC Program

- (e) Where compliance with the Terms and Conditions would cause non-compliance with a relevant law or regulation in a specific jurisdiction, a Program Ally should act in full compliance with the relevant law or regulation in that jurisdiction instead of the Terms and Conditions.
- (f) The terms of any vendor financing, such as energy performance contracts, must not conflict with any financing terms offered through the respective MCCAC Program. All terms and conditions for any vendor financing must be disclosed to the Program Participant at the time of offering.

5.0 Representations and Warranties

The Program Ally represents and warrants that:

- (a) the Program Ally and all Personnel possess the skills, knowledge, and experience necessary to provide all of the Work as required;
- (b) the Work will be of professional quality, in accordance with professional standards, in strict compliance with all Program Terms and Conditions, and free of infringement of any intellectual Property Rights of any third person or entity;
- (c) the Program Ally will maintain all relevant licenses and permits required by federal, provincial, county or municipal government, or any other agencies with jurisdiction over the course of Work performed during the Program, including all relevant licenses or permits for subcontractors engaged in fulfilment of Work performed through the Program; and
- (d) the Program Ally is responsible for all Program related Work, including all Personnel acting in compliance with the terms of the Terms and Conditions.

6.0 Conflicts of Interest

- (a) Except as has been previously disclosed to MCCAC, the Program Ally affirms that neither the Contractor, its affiliates or its employees, has, or will enter into any contractual, financial, business or other interest, that would conflict in any manner with the Program Ally's performance of its obligations under these Terms and Conditions or otherwise create the appearance of conflict with respect to these Terms and Conditions.

7.0 Insurance

- (a) When the Workers' Compensation Act (Alberta), as amended from time to time, applies, and upon request from the MCCAC, the Candidate shall deliver a certificate from the Workers' Compensation Board showing that the Candidate is registered and in good standing with the Board.
- (b) Commercial general liability insurance, written on an occurrence basis, including bodily injury, property damage, personal injury, advertising injury, products and completed operations, and contractual liability, in an amount not less than:
 - (i) Each Occurrence Limit \$1,000,000;
- (c) Where there is a risk of damages arising out of any act, error or omission in professional services rendered, the Program Ally must obtain and maintain errors and omissions insurance, in accordance with the Alberta Insurance Act, in an amount not less than \$500,000 per claim insuring its liability resulting from errors and omissions in the performance of its Services under this Contract. This insurance is required to remain in place for a period of 12 months following the completion or termination of this Contract and this condition may be satisfied with a 12-month extended reporting period.
- (d) The corresponding coverage held by the Candidate is for the sole use and protection of the Candidate. All coverage obtained and maintained by the Candidate shall be primary to and non-contributory.

8.0 FOIP and Confidential Information

- (a) The Program Ally acknowledges that the *Freedom of Information and Protection of Privacy Act* R.S.A. 2000 c.F-25 may apply to all information and records provided by the Program Ally to the MCCAC and to any information and records which are in the custody or under the control of the MCCAC.
- (b) "**Confidential Information**" means all technical, corporate, financial economic, legal or other information

or knowledge generally concerning the MCCAC , other boards, agencies, associations, the Government of Alberta, or specifically concerning the respective MCCAC Program, whether disclosed orally, or in the form of written material, computer data or programs, and includes information respecting the MCCAC's registrants, processors, financial information, models, mechanisms, processes, intellectual property, trade secrets or otherwise, but does not include information that is:

- (i) in the public domain;
 - (ii) disclosed lawfully to the Program Ally by a third party who has no obligation of confidentiality to the MCCAC with respect to the disclosed information;
 - (iii) becomes known to the public, other than by a breach of the Program Ally of its obligations under these Term and Conditions; or
 - (iv) already known by Program Ally before disclosure by the MCCAC under these Terms and Conditions, as evidenced by written records of the Program Ally.
- (c) The Program Ally shall not use the Confidential Information for any purpose other than to perform its obligations in accordance with the terms of these Terms and Conditions and shall maintain the Confidential Information in strict confidence and shall not disclose, divulge or communicate directly or indirectly at any time any Confidential Information to any person, firm, corporation, subcontractor, employee, or to any third party, except to the extent necessary to perform the its obligations under these Terms and Conditions, and fulfill the terms of these Terms and Conditions, provided that the Contractor shall contractually require such person, firm, corporation, subcontractor, employee or third party to be bound by confidentiality and restricted use obligations no less stringent than those provisions that bind the Program Ally. The Program Ally may only disclose the Confidential Information with the prior written consent of the MCCAC or where required by law.
- (d) On termination of these Terms and Conditions for any reason, the Program Ally will immediately return to MCCAC, or destroy if requested by MCCAC, all Confidential Information provided to the Program Ally by MCCAC, and all property, writing, materials, designs, patterns, blue-prints, work-in-progress, and data relating to these Terms and Conditions.

9.0 Compliance

- (a) MCCAC will utilize a tiered corrective action procedure for non-compliance with any of the Respective MCCAC Program requirements. Corrective action procedures are documented in the Program Ally Escalation Framework. MCCAC reserves the right to exercise full discretion to terminate any Program Ally at any time without liability and by participating in the respective MCCAC Program, the Program Ally acknowledges and understands that they shall have no recourse against MCCAC for such termination.
- (b) Notwithstanding the termination of there Terms and Conditions in whole or in part for any reason, all and agreements to be performed and/or observed under these Terms and Conditions which by their nature are to survive the termination of these Terms and Conditions, including without limitation those relating to confidentiality, termination, and indemnification, will survive any such expiration or termination.

10.0 Limitation of Liability

- (a) The Municipal Climate Change Action Centre's sole liability hereunder is limited to the extent the Municipal Climate Change Action Centre is legally responsible, arising out of the negligence or willful acts of the Municipal Climate Change Action Centre's in relation to the performance of its obligations under the Program Ally on-boarding process.
- (b) The Program Ally shall indemnify and hold harmless the MCCAC and its directors, employees, representatives, and agents from any and all claims, losses, liabilities or damages, including consequential damages and costs arising directly or indirectly from but not limited to the obligations supplied under these Terms and Conditions. In no event shall the MCCAC be liable to the Program Ally for any consequential, incidental, special reliance or indirect damages arising out of or related to Program participation, its cancellation, or any changes thereto whether such claim is based in contract or tort and whether or not the Program Ally has been advised of the possibility of such damages.

- (c) The Program Ally, its agents, successors and assigns hereby release and forever discharge the MCCAC from all actions, causes of action, claim, or demands whatsoever under these Terms and Conditions.
- (d) Each Program Ally waives the right to bring or assert any claim against the MCCAC relating to its registration and status as a Program Ally (including listing of information) and releases the MCCAC from any and all liability therefore or relating thereto.

11.0 Miscellaneous

- (a) The MCCAC makes no assurance that any person or entity will gain additional business or any other business advantage from being a Program Ally and assumes no liability.
- (b) The MCCAC reserves the right to remove a Program Ally from the Program Allies Directory for any reason.
- (c) The MCCAC reserves the right to amend these Terms and Conditions, in whole or in part, at any time and solely at its discretion.