

Terms and Conditions

Through its Energy Design Assistance Program (EDA), Xcel Energy will pay rebate(s) to business customers ("Customer" or "Customers") to incorporate certain energy-efficiency measures in the design and construction of their facilities with the understanding that Customer participation in the EDA program precludes Customer's participation in Xcel Energy's prescriptive and custom (component) rebate programs.

In order to participate in the EDA, the Customer will agree to the following terms and conditions:

1. Customer agrees to have equipment, controls or components that are part of its facility and its associated systems ("Measures") installed in the building or facility in material conformity with the project proposal(s) and the completed EDA program application designated as accepted by the Xcel Energy (the "Program Application"). Customer represents that an accurate copy of the Program Application and all project proposal(s) are attached.

2. Payment of rebate

2.1 Upon installation of Measures as identified and described in the above Scope of Work, and subject to inspection and approval of said Measures by Xcel Energy, Xcel Energy agrees to pay to Customer a rebate based on a calculated amount from actual installed energy efficiencies identified from the Scope of Work.

3. Project information

3.1 Upon request, Customer agrees to provide Xcel Energy with additional detailed information pertaining to the Project proposal(s) that may be of help in evaluating and substantiating electric/gas savings or energy reduction estimates. Examples of such information include construction documentation, incremental capital costs, product specifications and manufacturer literature on the equipment for which a rebate is sought.

4. Preapproval required

4.1 Xcel Energy is under no obligation to provide payment of funds for installation of Measures begun prior to execution of this Agreement by Xcel Energy's authorized representative.

5. Onsite Verification

5.1 Customer agrees to provide Xcel Energy's representatives with reasonable access to the Facility and the Measures for which rebates are sought. Customer agrees to provide Xcel Energy's representatives with records related to the Facility and Measures as may be reasonably requested from time to time to verify equipment characteristics, quantities, and performance. This verification process may include the installation, monitoring, and temporary data collection.

6. Rebate payments

6.1 Xcel Energy will generally pay rebates within eight weeks after the provisions of this agreement are met. Rebates will be in the form of a check and not as a credit on Customer's utility bill. The benefits conferred upon Customer under this program may be taxable. Customers are responsible for paying all applicable taxes. Customer is encouraged to consult a tax advisor for further information.

7. Term and Cancellation

7.1 This agreement will become effective upon the date of Customer's signature on the EDA application

form and will continue until terminated. Unless terminated earlier pursuant to Sections below the contract will terminate upon Customers receipt of rebate and satisfaction of all conditions subsequent listed in the Agreement. Customer may terminate this Agreement for convenience at any time. Company may terminate the Agreement.

8. Confidentiality

8.1 Any and all proprietary information including but not limited to operational, technical or financial data, disclosed by Party to the other Party as a part of this EDA program will be considered confidential (the "Confidential Information") and the receiving Party will not disclose such Confidential Information to a third party except as required by statute, regulation or lawful court order. No Party will use Confidential Information for any purpose, other than those purposes specified in this Agreement.

8.2 Confidential Information does not include information available in the public domain, independently known prior to receipt thereof, independently developed by the receiving party or disclosed by a third party not subject to a duty of non-disclosure.

8.3 The obligations of confidentiality set out in this section will be in effect for a period of three (3) years from the termination of this agreement.

9. Limitation of liability and indemnification

9.1 Xcel Energy and any of its corporate affiliates, employs, agents, or contractors "Affiliates" will not be held liable, in any event or circumstance, whether in contract or in tort (including negligence or strict liability), for any special, indirect, incidental or consequential damages.

9.2 The total liability of Xcel Energy and its Affiliates will be limited to the amount of any rebates due the Customer.

9.3 Only to the extent allowed by law and without waiving any governmental immunities, Customer will defend, indemnify and hold Xcel Energy and its Affiliates harmless against all claims, demands and causes of action of every kind and character arising in favor of any person, including Xcel Energy or Customer employees on account of personal or bodily injuries or death, or damages to property resulting directly or indirectly from the Facility or EDA program, whether such loss, damage, injury or liability or claim thereof arises from or is contributed to by the negligence of Xcel Energy, its Affiliates, or another Party.

9.4 Limitation of Total Liability - Without waiving its governmental immunity, Customer agrees to be responsible for its own negligent acts and omissions. It is specifically understood and agreed that nothing contained or implied in this agreement shall be construed as an express or implied waiver by Customer of its governmental immunity or as an express or implied acceptance by Customer of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act.

10. No Warranties

10.1 Customer acknowledges that neither Xcel Energy nor its Affiliates will warrant that the design, engineering and / or construction of the Facility or installation of the Conservation Measures is appropriate or complies with particular laws, codes, 3rd party certification or any other industry or environmental standard(s).

10.2 Customer furthermore acknowledges that neither Xcel Energy nor its Affiliates guarantee that installation of any of the Conservation Measures will result in any level of energy savings or result in any measurable energy-related benefit.

10.3 NO OTHER WARRANTIES, WHETHER STATUTORY, WRITTEN OR ORAL, EXPRESSED OR

IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WILL APPLY.

11. Publicity

11.1 Customer agrees that Xcel Energy may identify, in a business appropriate manner, Customer and Facility in its publications and promotional materials related to the EDA program unless otherwise noted.

12. Miscellaneous

12.1 This Agreement is the entire Agreement between Xcel Energy and Customer and supersedes all prior agreements with respect to the EDA program.

12.2 Customer certifies that the individual signing the EDA Agreement is authorized to do so.

12.3 Any modification or amendment to this Agreement must be in writing and signed by both Parties.

12.4 Applicable Law. This Agreement will be construed in accordance with the laws of the State of Colorado. Customer and any other individual claiming rights related to the Facility submit to the jurisdiction of the Colorado Public Utility Commission.

12.5 Force Majeure. No Party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the party.

12.6 The unauthorized use of either Party's name, logo, or other identifying marks is expressly prohibited.

12.7 Customer shall give all notices related to the Facility to applicable governmental entities and obtain and pay for all licenses, permits and inspections that Customer's Facility is legally required to obtain for construction or reconstruction. Xcel Energy shall have the right to inspect and obtain copies of all written licenses, permits or approvals, issued by any governmental body to Customer or its Subcontractors that are applicable to the performance of the Agreement.

12.8 Except for the third parties described or named in the Agreement, no provision of the Agreement shall in any way inure to the benefit of any third person so as to make any such person a third party beneficiary of this Agreement.

If you agree to the terms and conditions, sign below.

Name _____

_____ Date _____

Signature