



STRATEGIC ENERGY MANAGEMENT FOR INDUSTRY

Capital Retrofits Terms and Conditions

October 17, 2024

Terms and Conditions

PROGRAM OVERVIEW

Emissions Reduction Alberta's Strategic Energy Management for Industry (SEMI) program helps industrial and manufacturing facilities improve their energy performance by offering co-funding to implement an integrated system of practices, processes, and capital retrofits.

With funding from the Government of Alberta's Technology Innovation and Emissions Reduction (TIER) fund and Natural Resources Canada (NRCAN), the objective for SEMI is to support eligible facilities to:

- ▶ Understand energy use;
- ▶ Identify methods and approaches to optimize energy use;
- ▶ Implement energy-saving capital retrofits; and
- ▶ Improve energy productivity and competitiveness.

SEMI offers financial incentives that cover up to 50% of eligible project costs for for-profit organizations and up to 100% for not-for-profits and Indigenous organizations. Additional funding caps are stated on the SEMI website. SEMI also allows in-kind contributions from the facility to offset the co-funding requirement for certain activities.

These terms and conditions ("Agreement") are between Emissions Reduction Alberta ("ERA") and the Program Participant ("Participant" or "You" or "Your").

The first step in SEMI is for You to complete a Facility Readiness Assessment (FRA). For-profit organizations must cover 50% of the cost; however, it is anticipated that Your contribution can be provided as an in-kind contribution. In-kind contributions can include facility staff time necessary to complete any aspect of the FRA and prior energy management activities that contribute value to eligible activities. The FRA will provide You with recommendations to implement further eligible activities for Your consideration.

ONCE THE FRA IS COMPLETE, YOU MAY PARTICIPATE IN THE BELOW FOUR ELIGIBLE ACTIVITIES ("ELIGIBLE ACTIVITIES"):

- ▶ **Conduct Energy Assessments and Audits (EAA)**
- ▶ **Implement Energy Management Information Systems (EMIS)**
- ▶ **Implement Strategic Energy Management (SEM)**
- ▶ **Invest in Energy Efficiency Focused Capital Retrofits (Capital Retrofits)**

This Agreement is only applicable to Capital Retrofits.

ELIGIBILITY

You represent and warrant that You meet the following eligibility requirements:

- ▶ You have completed a FRA through the SEMI program.
- ▶ Your facility is located in Alberta.
- ▶ You own or lease the facility. For a leased facility You have obtained permission from Your landlord to undertake the Eligible Activities.
- ▶ Your facility has been in operation for at least one year prior to the date of this Agreement with fixed equipment and buildings used to produce goods.
- ▶ Your operation is defined by the following North American Industry Classification System (NAICS) codes: 11, 21, 22, 23, 31, 32, 33, 48, and 56. ERA may consider additional NAICS codes on a case-by-case basis.
- ▶ You are not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, nor have You made an assignment in favour of Your creditors nor a proposal in bankruptcy to Your creditors or any class thereof nor has any petition for a receiving order presented in respect of You. You have not initiated proceedings with respect to a compromise or arrangement with Your creditors or for Your winding up, liquidation or dissolution. No receiver has been appointed in respect of You, or any of Your property or assets and no execution or distress has been levied upon any of Your property or assets. No proceedings have been taken or authorized by any person with respect to (as applicable) the bankruptcy, insolvency, liquidation, dissolution or winding-up of You.
- ▶ This Agreement, and each of the agreements to be executed and delivered by You pursuant to this Agreement, has been duly authorized, validly executed or otherwise agreed to by positive action on Your behalf, and delivered by You, and constitutes a legal, valid and binding obligation of Yours enforceable against You in accordance with its terms.

What is the Capital Retrofits activity?

The Capital Retrofits activity supports modifications or upgrades of equipment (stationary and mobile), facilities, processes, or infrastructure to achieve energy savings and emission reductions. For-profit facilities can receive funding from the SEMI program that covers up to 50% of eligible expenditures to a maximum of \$1,000,000 (per facility). Funding from the SEMI program is payable upon completion of the Capital Retrofits project. Capital Retrofits could be recommended through the FRA, EAA, SEM or EMIS activities, or You can propose potential Capital Retrofits during the FRA. You can apply for a single project or a portfolio consisting of multiple projects under a single application. This Agreement will apply to, and govern, any Capital Retrofit project approved by ERA and undertaken by You.

ENROLLMENT PROCESS AND YOUR RESPONSIBILITIES

The Capital Retrofit enrollment process involves the following steps:

- ▶ Register via the SEMI online portal and complete a FRA.
- ▶ On the online portal, submit a Capital Retrofits application including the following supporting documents:
 - ▶ A feasibility study that supports the proposed Capital Retrofit(s).
 - ▶ Minimum of 12 months of energy consumption data for the applicable system(s) in Excel format.
 - ▶ Capital Retrofit cost estimate supported by vendor quotes for major cost items.
 - ▶ Capital Retrofit workplan including important milestones.
- ▶ Select a SEMI approved contractor to carry out the Capital Retrofit workplan including installation of the Capital Retrofits.
 - ▶ To become an approved contractor in SEMI, contractors will first need to register on the online portal.
- ▶ Enter into this Agreement upon receiving a SEMI program pre-approval notification.
- ▶ Implement and install the Capital Retrofit using good engineering practices in compliance with applicable laws and regulations before March 31, 2027.
- ▶ Notify ERA immediately of any changes to the Capital Retrofit scope, timeline, or budget.
- ▶ Submit Measurement & Verification Reporting (M&VR) document identifying the procedures, requirements, and methods to be used for verification of outcomes of the proposed initiative.

- ▶ Allow site access, as and when required by ERA, to ERA and any ERA contractors, service providers and agents to confirm the Capital Retrofit installation and verify energy and GHG savings.
- ▶ Submit the data and information as specified in the M&VR via the online portal for review by ERA or any service provider retained by ERA for such review purposes.
- ▶ Submit invoices for eligible expenditures, as contemplated and described in Schedule B hereto, via the online portal for review and approval by ERA or any service provider retained by ERA for such review purposes.
- ▶ Submit Your Capital Retrofit incentive invoice via the online portal to receive the incentive payment.
- ▶ Log, maintain, and submit data related to Your Capital Retrofit project until March 31, 2031 in accordance with the M&VR document.
- ▶ Notify ERA of any factors leading to the project underperformance immediately after the Capital Retrofit is in-service and continue to do so until March 31, 2031.

Please refer to the appendices for additional information on the following:

- ▶ Schedule A – Capital Retrofits Scope & Estimated Savings
- ▶ Schedule B – Projected Eligible Expenditures
- ▶ Schedule C – Co-Funding Details

ADDITIONAL TERMS AND CONDITIONS

- ▶ ERA may amend, modify, or terminate SEMI, including this Agreement, at any time based on funding limitations or for any reasons whatsoever and in its sole and absolute discretion, without notice.
- ▶ You indemnify and save harmless NRCan, its employees, officers and agents, and ERA, its 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 Your participation in SEMI and the Eligible Activity implementation of any recommendations, including the installation and/or use of recommended products and improvements. You irrevocably waive any and all claims against, and irrevocably release and agree not to sue, NRCan, or ERA, and any of their respective officers, directors, employees, agents, contractors or representatives for and against all Losses arising from Your participation in SEMI and the Eligible Activities and/or the implementation of any recommendations, including the installation and/or use of recommended products and improvements.

- ▶ ERA may contact You to administer, verify compliance with, and evaluate SEMI, and conduct surveys.
- ▶ ERA may use information (including personal information) whether provided by You, the Service Provider or the installation contractor, obtained during site visits or contained in, or forming part of, any documents submitted as part of the application, and disclose the information to affiliates, contractors, representatives, agents, program partners and funding partners, to process, administer and evaluate the program, the rebates and Your eligibility, to monitor and assess compliance with the terms and conditions, conduct surveys and to develop other energy conservation programs.
- ▶ ERA collects, uses, and discloses information in accordance with the *Personal Information Protection Act (Alberta)*, and the *Access to Information Act (Canada)*, as applicable, and its Privacy Policy. For more information on ERA's privacy policy, visit <https://www.eralberta.ca/privacy/>
- ▶ You shall comply with all federal environmental laws applicable to the Eligible Activities, including the provisions of the *Impact Assessment Act (Canada)* related to the retrofits carried on federal lands or outside of Canada. You will disclose if one of the Eligible Activities will be carried out on federal lands, and You acknowledge and agree that ERA may then suspend the Eligible Activities, including any funding thereof by ERA, or terminate this Agreement.
- ▶ Provide supporting documentation to determine Your in-kind and cash contributions to Your Capital Retrofit project.
- ▶ For the duration of the Eligible Activities and Your participation in SEMI, and thereafter for a period of four (4) years, You will a) keep proper and accurate books, accounts, and records of Your revenue received and expenses incurred and paid in connection with the Eligible Activities and shall keep Your invoices, receipts, and vouchers relating thereto; b) keep proper and accurate records of all data, analyses, and other scientific or technical assessments and reports, and any and all information relating to the outputs and outcomes of the Eligible Activities, You will provide all records, information, and other documentation for any review, evaluation or audit reports required by ERA, SEMI or NRCan. This includes access to Your premises and documents.
- ▶ Disclose any other government funding You may use for the FRA and other Eligible Activities.
- ▶ You agree that all intellectual property that arises in the course of participating in SEMI shall vest in ERA, or be licensed to ERA in the event that ERA's subcontractor retains title to such intellectual property. Such license shall be a non-exclusive, irrevocable, worldwide, free and royalty-free license in perpetuity to use, modify, and make publicly available such reports and documents for non-commercial or governmental purposes.
- ▶ You shall not sell, lease or otherwise dispose of Your freehold or leasehold interest, as applicable, in the facility, nor any goods acquired or used for Eligible Activities without the prior written consent of ERA, which consent may be withheld at ERA's sole, absolute and unfettered discretion, prior to the completion of Eligible Activities and for three (3) years thereafter. You shall not assign this Agreement nor any of Your rights, title, interest or obligations herein, in whole or in part, without the prior written consent of ERA, which consent may be withheld at ERA's sole, absolute and unfettered discretion.
- ▶ ERA may declare that an event of default under this Agreement has occurred if:
 - ▷ If the Capital Retrofit is deemed by ERA in its sole discretion to be not generating a minimum savings of 5% after the review of the annual M&VR report.
 - ▷ If the Capital Retrofit is not deemed by ERA in its sole discretion to be in-service by March 31, 2027, unless an extension is granted in ERA's sole discretion.
 - ▷ There is a material change in the Capital Retrofit scope that has not been conveyed to ERA in writing and approved by ERA.
 - ▷ If the equipment implemented through this Capital Retrofit ceases operation before the fifth anniversary of the in-service date.
 - ▷ If the equipment being replaced is not decommissioned or disposed of as per the regulations, or such equipment is reused.
 - ▷ If You effect any sale, lease, disposition or assignment that does not comply with Section 11 above.
 - ▷ You become insolvent or are adjudged or declared bankrupt or if You go into receivership or take the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors.
 - ▷ An order is made which is not being contested or appealed by You or a resolution is passed for Your winding up or You are dissolved.
 - ▷ In the opinion of the ERA, there has been a misrepresentation or breach of warranty made, or given, by You in this Agreement.
 - ▷ In the opinion of ERA, acting reasonably, a material adverse change in risk affecting the fulfilment of the terms and conditions of this Agreement has occurred.
 - ▷ Any term, condition or undertaking in this Agreement is not complied with by You, within thirty (30) days of written notice of such defect having been provided to You; or
 - ▷ You neglect or fail to pay the ERA any amount due by You in accordance with this Agreement.

- ▶ If ERA declares that an event of default has occurred, in addition to all other remedies provided under contract law, ERA may exercise one or more of the following remedies (which remedies are cumulative):
 - ▷ suspend or terminate any obligation to contribute or continue to contribute to the Eligible Activities or any part thereof, including any obligation to pay any amount owing prior to the date of such suspension or termination.
 - ▷ terminate this Agreement; and
 - ▷ direct You to repay all or part of any funds which have been paid to You under SEMI, together with interest as determined by ERA, acting reasonably, from the date of demand.
- ▶ The fact that ERA does not exercise a remedy that ERA is entitled to exercise under this Agreement will not constitute a waiver of such right and any partial exercise of a right will not prevent ERA in any way from later exercising any other right or remedy under this Agreement or other applicable law.
- ▶ This Agreement shall enure to the benefit of, and be binding on the ERA and You, and their respective representatives, successors and assigns.

SCHEDULE A

CAPITAL RETROFITS SCOPE & ESTIMATED SAVINGS

DELIVERABLES	DESCRIPTION
Project Name & Description	Insert Project Name (e.g. Motor Upgrade, Air Compressor Replacement)
Facility Name & Address	100 Main Street, Calgary AB T1Y 1Y1
ERA Application ID	
Estimated Annual Energy Savings (GJ)	XX GJ/year
Estimated Annual GHG Reduction (tCO2)	XX tCO ₂ /year
Estimated Eligible Expenditures	\$20,000,000
Project Start Date	MMM, DD, YYYY
Project End Date	MMM, DD, YYYY
Estimated In-Service Date	MMM, DD, YYYY

SCHEDULE B

PROJECTED ELIGIBLE EXPENDITURES

Note: Form available on the online portal in Excel format.

PROPOSED FORMAT FOR ELIGIBLE EXPENDITURES WORKBOOK COST BREAKDOWN

- ▶ Capital Retrofit materials
- ▶ Capital Retrofit construction and installation labour
- ▶ Capital Retrofit professional services (design, commissioning)
- ▶ Travel & accommodation expenses

SCHEDULE C

CO-FUNDING DETAILS

DESCRIPTION	CO-FUNDING BREAKDOWN
Capital Retrofits (NTD Insert Project Name)	Total Value (A)
SEMI Program Contribution (Adjusted for other government funding sources, and Your in-kind contributions) Funding from other sources In-Kind contribution	(B)
Your Financial Contributions	(A) –(B)