

## 1. Incentives

Subject to these Terms & Conditions, the Municipal light department (MLD) will pay Incentives to Customer for the installation of EEMs.

## 2. Definitions

- (a) "Customer" means the customer maintaining an account for service with the MLD, maintains an account for service with the distribution company serving the territory of such Municipal light department, and who satisfies the Program eligibility requirements established by the Municipal light department.
- (b) "EEMs" are those energy efficiency measures described in the Program Materials or other Custom Measures that may be approved by the Municipal light department.
- (c) "Facility" means the Customer location served by the Municipal light department where EEMs are to be installed.
- (d) "Incentives" means those payments made by the Municipal light department to Customers pursuant to the Program and these Terms and Conditions.
- (e) "Program" means the energy efficiency program offered by the Municipal light department to Customers.
- (f) "Program Year" means the calendar year – January 1<sup>st</sup> through December 31<sup>st</sup>.
- (g) "MLD" means the Municipal light department offering the efficiency incentive.
- (g) "MMWEC" means the Massachusetts Municipal Wholesale Electric Company a joint action agency serving municipal light departments in Massachusetts by providing services for their energy efficiency programs.
- (h) "Program Materials" means the documents and information provided by the Municipal light department specifying the qualifying EEMs, technology requirements, costs and other Program requirements, which include, without limitation, program guidelines and requirements, application forms and approval letters.
- (i) "NextZero" means the NextZero Program, an efficiency program operated by MMWEC for Municipal light departments through contractual agreement.

## 3. Application Process and Requirement For Municipal light department Approval

- (a) The Customer shall submit a completed application in the form specified by the MLD. In addition, at the MLD's discretion, the Customer may be required to provide the MLD with a copy of the detailed specifications and scope of work, as well as an analysis of the savings and/or demand reduction, for the EEMs proposed for approval. (b) The MLD or its agent will review the Customer's application and supporting documentation to determine, the energy savings and demand reduction potential if appropriate to the program or validate that measures or eligible for the program. The MLD reserves the right to reject or modify any calculations, based on the MLD's own analysis.
- (c) The MLD is not obligated to pay any Incentives unless all program requirements are met by the Customer, its agent or vendor, including any required or necessary pre- and post- installation verification activity. When an approval letter is needed, the MLD's approval letter shall state the maximum approved Incentive amount and the date by which the EEMs must be fully installed and operational to qualify for Incentive payments. Depending upon the Program, the MLD may also require the Customer to execute additional agreements, or provide other documentation regarding the proposed EEM installation and Incentive payment(s).
- (d) The Customer will have no right to receive, and the MLD will have no obligation to pay, Incentives for any EEMs that have not been approved in writing in advance by the MLD, unless the Program Materials state that such prior approval is not required. Further, the MLD is not obligated to pay Incentives for projects which were pre-approved but are determined to not comply with Program requirements after installation is complete.
- (e) The MLD reserves the right to approve or disapprove of any application or proposed EEMs.

## 4. Pre-and Post-Installation Verification

The MLD is not obligated to pay any Incentives until the MLD has performed a satisfactory pre-installation inspection (unless the Program Materials state such pre-inspection is not required) and post-installation verification of the installation. If the MLD determines that any EEMs were not installed in accordance with these Terms and Conditions, the Program Materials and the MLD's approval, the MLD shall have the right to require modifications before having the obligation to make any Incentive payments. At its discretion the MLD may also withhold payment of Incentives until it has been verified that the Customer has received, as appropriate, final drawings, operation and maintenance manuals, and operator training, and the MLD has received documentation detailing the installation of the EEMs in accordance with these Terms and Conditions, the Program Materials and the MLD's approval.

## 5. Monitoring and Inspection

The MLD, MMWEC or its agents reserves the right to perform monitoring and inspection of the EEMs for a three year period following completion of the installation in order to determine the actual demand reduction and energy savings.

As a condition of receiving an Incentive, the Customer agrees to provide access and information to the MLD and cooperate with the MLD regarding such activity. By participating in the Program, the Customer acknowledges and agrees that no activity by the MLD includes any kind of safety, code or other compliance review.

## 6. Incentive Amounts

- (a) The MLD reserves the right to adjust and/or negotiate the Incentive amount.
- (b) Once an Incentive amount is pre-approved, the MLD will pay no more than the cost to the Customer of purchasing and installing the EEM, or the pre-approved Incentive amount, whichever is less.
- (c) The MLD reserves the right to reduce or eliminate the Incentive amount if (1) the quantity and/or qualifying costs of EEMs actually installed differs from the pre-approved amounts, or (2) the EEMs were not installed in accordance with these Terms and Conditions, the Program Materials or the MLD's approval, or which have not been properly maintained, have been altered or disconnected, or in the event of a shutdown or significant reduction of operations at facility where the EEMs are located. In addition, Customer shall be obligated to refund such Incentive amounts paid by the MLD where the projected energy savings have not been achieved as a result of the foregoing circumstances.

## **7. Equipment and Installation**

Customer shall be responsible for ensuring that the EEMs are installed and operated in accordance with applicable laws, regulations and codes and that all applicable permits and inspections are obtained. Customer shall provide the MLD with copies of all invoices and related documents (including all materials, labor, and equipment discounts) relating to the purchase and installation of the EEMs. The itemized invoices shall include detail of all EEMs including the model, quantity and cost for each EEM, and shall identify any applicable discounts or Incentives. The Customer shall provide detail on the installation location of the EEMs in the format specified by the MLD, and such other documentation and information as the MLD may request, including, without limitation, copies of permits and contractor and supplier invoices, orders and records. The MLD reserves the right to determine in its reasonable discretion the appropriate costs of EEMs in order to calculate the Incentive amount.

## **8. Installation Schedule Requirements**

If the Customer does not complete installation of the approved EEMs within sixty (60) days from the date the MLD issues pre-approval of the EEM project, the MLD may terminate any obligation to make Incentive payments.

## **9. Incentive Payment Conditions**

Provided that the Customer has satisfied its obligations, the MLD shall use commercially reasonable efforts to pay each Incentive amount to the Customer within forty-five (45) days after all of the following conditions are met: (1) MLD's approval of the EEM project has been provided; (2) all applicable permits, licenses and inspections have been obtained by the Customer; (3) installation of the EEMs has been completed in accordance with the requirements hereof; and (4) the MLD has verified all product and installation costs and the satisfactory installation of the EEMs, all in accordance with the terms hereof. Customer shall not assign any of its rights or obligations referenced in these Terms and Conditions or in the Program Materials (including, without limitation, the right to receive Incentive payments) without first obtaining the written consent of the MLD.

## **10. Contractor Shared Savings Arrangements**

If EEMs are being installed by a contractor under a shared savings arrangement, the MLD reserves the right to determine the cost of purchasing and installing the EEMs.

## **11. Maintenance of EEMs**

Customer acknowledges and agrees that Customer shall operate and maintain the EEMs in accordance with the manufacturer's recommendations and the terms hereof, and shall replace consumable parts and other components with comparable or superior efficient products at the Customer's expense.

## **12. Program/Terms and Conditions Changes**

Program expenditures, requirements and eligibility, and these Terms & Conditions, may be changed by the MLD at any time without notice. The MLD reserves the right, for any reason, to withhold approval of projects and any EEMs, and to cancel or alter the Program, at any time without notice. Approved applications will be processed under the Terms and Conditions and Program Materials in effect at the time of the pre-approval by the MLD.

## **13. Publicity of Customer Participation**

The Customer grants to the MLD the right to use and reference for promotional and regulatory purposes the Customer's participation in the Program, the details of the EEM project and the energy savings, the amount of Incentives paid to the Customer, and any other information relating to the Customer's participation in the Program.

## **14. Indemnification and Limitation of Liability**

Customer shall indemnify, defend and hold harmless MLD, MMWEC, its affiliates and their respective contractors, officers, directors, employees, agents, representatives from and against any and all claims, damages, losses and expenses, including reasonable attorneys' fees and costs incurred to enforce this indemnity, arising out of, resulting from, or related to the Program or the performance of any services or other work in connection with the Program ("Damages"), caused or alleged to be caused in whole or in part by any actual or alleged act or omission of the Customer, any subcontractor, agent, or third party, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent allowed by law, the MLD's and MMWEC's aggregate liability, regardless of the number of claims, shall be limited to paying approved Incentives in accordance with these Terms and Conditions and the Program Materials, and the MLD and its affiliates and their respective contractors, officers, directors, employees, agents, representatives shall not be liable to the Customer or any other party for any other obligation. To the fullest extent allowed by law and as part of the consideration for participation in the Program, the Customer waives and releases the MLD and its affiliates from all obligations (other than payment of an Incentive), and for any liability or claim associated with the EEMs, the performance of the EEMs, the Program, or these Terms and Conditions.

## **15. No Warranties or Representations by the MLD**

(a) THE MLD DOES NOT ENDORSE, GUARANTEE, OR WARRANT ANY CONTRACTOR, MANUFACTURER OR PRODUCT, AND THE MLD MAKES NO WARRANTIES OR GUARANTEES IN CONNECTION WITH ANY PROJECT, OR ANY SERVICES PERFORMED IN CONNECTION HERewith OR THEREWITH, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER SHALL SURVIVE ANY CANCELLATION, COMPLETION, TERMINATION OR EXPIRATION OF THE CUSTOMER'S PARTICIPATION IN THE PROGRAM. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS', LICENSORS', OR PROVIDERS' OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE PROGRAM UNDER THESE TERMS AND CONDITIONS, INCLUDING ITEMS INCORPORATED IN THE PROGRAM, ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF THE MLD AND THE MLD MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES. THE TERMS OF THIS SECTION SHALL GOVERN OVER ANY CONTRARY VERBAL STATEMENTS OR LANGUAGE APPEARING IN ANY MLD'S OTHER DOCUMENTS.

(b) Neither the MLD nor any of its employees or contractors is responsible for determining that the design, engineering or installation of the EEMs is proper or complies with any particular laws, codes, or industry standards. The MLD does not make any

representations of any kind regarding the benefits or energy savings to be achieved by the EEMs or the adequacy or safety of the EEMs.

(c) Customer acknowledges and agrees that it is solely responsible (directly-based on its own judgment or indirectly-based on the advice of an independent expert (not the MLD) for all aspects of the EEMs and related work including, but not limited to: selecting the equipment; selecting contractors to perform the work; inspecting the work and the equipment; ensuring that the equipment is in good working order and condition; ensuring that the equipment is of the manufacture, design specifications, size and capacity selected by the Customer and that the same is properly installed and suitable for Customer's purposes; and determining if work was properly performed.

(d) Customer agrees and acknowledges that MLD is not a manufacturer of, or regularly engaged in the sale or distribution of, or an expert with regard to, any equipment or work.

(e) The provisions of this Section 16 shall survive the termination, cancellation or completion of the Customer's participation in the Program.

#### **16. Equipment and Contractor Selection and Contracting**

Customer is responsible for selecting and purchasing the EEMs and selecting and contracting with the design and installation contractor(s). The Customer shall be responsible for enforcing all such contracts and for assuring that the EEMs meet Program requirements and applicable laws, regulations and codes, and that the contractor(s) are properly qualified, licensed and insured. Notwithstanding the foregoing, the Customer acknowledges that the MLD reserves the right to deny a vendor or contractor to participate in this Program or provide equipment or services. The MLD also has the right to exclude certain equipment from the Program.

#### **17. Removal of Equipment**

The Customer agrees, as a condition of participation in the Program to properly remove and dispose of or recycle the equipment, lamps and components in accordance with all applicable laws, and regulations and codes. The Customer agrees not to re-install any of removed equipment in the Commonwealth of Massachusetts or the service territory of any affiliate of the MLD, and assumes all risk and liability associated with the reuse and disposal thereof.

#### **18. Energy Benefits**

Other than the energy cost savings realized by Customer, the MLD is entitled to 100% of the benefits and rights associated with the EEMs, including without limitation ISO-NE products and all other attributes, credits or products associated therewith under any regional initiative or federal, state or local law, program or regulation or program, and Customer waives, and agrees not to seek, any right to the same.

#### **19. Customer Must Declare and Pay All Taxes**

The benefits conferred upon the Customer through participation in this Program may be taxable by the federal, state, and local government. The Customer is responsible for declaring and paying all such taxes. The MLD is not responsible for the payment of any such taxes.

#### **20. Counterpart Execution; Scanned Copy.**

Any and all agreements and documents requiring signature related hereto may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A scanned or electronically reproduced copy or image of such agreements and documents bearing the signatures of the parties shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of such agreements and documents notwithstanding the failure or inability to produce or tender an original, executed counterpart of the same and without the requirement that the unavailability of such original, executed counterpart of the same first be proven.

#### **21. Miscellaneous**

(a) Paragraph headings are for the convenience of the parties only and are not to be construed as part of these Terms and Conditions.

(b) If any provision of these Terms and Conditions is deemed invalid by any court or administrative body having jurisdiction, such ruling shall not invalidate any other provision, and the remaining provisions shall remain in full force and effect in accordance with their terms.

(c) These Terms and Conditions shall be interpreted and enforced according to the laws of the Commonwealth of Massachusetts.

(d) In the event of any conflict or inconsistency between these Terms and Conditions and any Program Materials, these Terms and Conditions shall be controlling.

(e) Except as expressly provided herein, there shall be no modification or amendment to these Terms and Conditions or the Program Materials unless such modification or amendment is in writing and signed by a duly authorized officer of the MLD.

(f) The provisions of Sections 5, 6, 7, 8, 10, 12, 14, 15, 17, 18, 1, and 20 (including any other sections herein that specifies by its terms that it survives termination) shall survive the termination or expiration of the Customer's participation in the Program.