

Attachment 1  
**Terms and Conditions**

**1. Incentives**

Subject to these Terms & Conditions, the Holden Municipal Light Department (“HMLD”) and its authorized representative will pay Incentives to Customer for the installation of EEMs.

**2. Definitions**

- (a) “Customer” means the customer maintaining an account for service with HMLD and who satisfies the Program eligibility requirements established by HMLD.
- (b) “EEMs” are those energy efficiency measures described in the Program Materials or other Custom Measures that may be approved by HMLD.
- (c) “Facility” means the Customer location served by HMLD where EEMs are to be installed.
- (d) “Incentives” means those payments made by HMLD to Customers pursuant to the Program and these Terms and Conditions.
- (e) “Program” means the energy efficiency program offered by HMLD to Customers.
- (f) “HMLD” means the Holden Municipal Light Department.
- (g) “MMWEC” means the Massachusetts Municipal Wholesale Electric Company a joint action agency serving municipal light departments in Massachusetts by providing services directly or through third parties for municipal energy efficiency programs. MMWEC and its third party providers are authorized representatives of HMLD, solely for purposes of this program.
- (g) “Program Materials” means the documents and information provided by HMLD specifying the qualifying EEMs, technology requirements, costs and other Program requirements, which include, without limitation, program guidelines and requirements, application forms and approval letters.

**3. Application Process and Requirement for HMLD Approval**

- (a) The Customer shall submit a completed application in the form specified by HMLD, or its authorized representatives. In addition, at HMLD’s discretion or that of its authorized representative, the Customer may be required to provide 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. Customer will upon request by HMLD or its authorized representative provide a copy of the as-built drawings and equipment submittals for the Facility after EEMs are installed. This analysis shall be prepared by a Professional Engineer licensed in the state where the Facility is located to the extent required by HMLD or by applicable law, regulation or code.
- (b) HMLD or its authorized representative will review the Customer’s application and supporting documentation to determine the energy savings and demand reduction potential. HMLD, or its authorized representative reserve the right to reject or modify any calculations, based on HMLD’s, or its authorized representative own analysis.
- (c) HMLD, or its authorized representative, is not obligated to pay any Incentives unless the authorized representative of HMLD issues an approval letter regarding the EEMs proposed by the Customer, and any necessary pre- and post- installation verification activity is successfully completed by HMLD or its authorized representative. HMLD’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. HMLD or its authorized representative 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 HMLD or its authorized representative will have no obligation to pay, Incentives for any EEMs that have not been approved in writing in advance by HMLD, unless the Program Materials state that such prior approval is not required. Further, HMLD or its authorized representative 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) HMLD or its authorized representative reserves the right to approve or disapprove of any application or proposed EEMs.

**4. Pre-and Post-Installation Verification**

HMLD or its authorized representative is not obligated to pay any Incentives until HMLD or its authorized representative 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 HMLD or its authorized representative determines that any EEMs were not installed in accordance with these Terms and Conditions, the Program Materials and HMLD’s approval, HMLD or its authorized representative shall have the right to require modifications before having the obligation to make any Incentive payments. At its discretion HMLD or its authorized representative 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 HMLD or its authorized representative has received documentation detailing the installation of the EEMs in accordance with these Terms and Conditions, the Program Materials and HMLD’s approval.

## **5. Monitoring and Inspection**

HMLD or its authorized representative 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 HMLD or its authorized representative and cooperate with HMLD or its authorized representative regarding such activity. By participating in the Program, the Customer acknowledges and agrees that no activity by HMLD or its authorized representative includes any kind of safety, code or other compliance review.

## **6. Site-Specific Custom Measures**

HMLD or its authorized representative will only approve of those site-specific custom EEMs that HMLD or its authorized representative believes have cost-effective energy savings potential. In any case, HMLD or its authorized representative reserves the right to approve or disapprove of any such EEMs proposed by Customer.

## **7. Incentive Amounts**

- (a) HMLD or its authorized representative reserves the right to adjust and/or negotiate the Incentive amount.
- (b) Once an Incentive amount is pre-approved, HMLD or its authorized representative will pay no more than one-half (½) the cost to the Customer of purchasing and installing the EEM, or the pre-approved Incentive amount, whichever is less.
- (c) HMLD or its authorized representative 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 HMLD'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 HMLD or its authorized representative where the projected energy savings have not been achieved as a result of the foregoing circumstances.

## **8. 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 HMLD or its authorized representative 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 HMLD or its authorized representative, and such other documentation and information as HMLD or its authorized representative may request, including, without limitation, copies of permits and contractor and supplier invoices, orders and records. HMLD or its authorized representative reserves the right to determine in its reasonable discretion the appropriate costs of EEMs in order to calculate the Incentive amount.

## **9. Installation Schedule Requirements**

If the Customer does not complete installation of the approved EEMs within the earlier of the completion date specified in HMLD's approval letter or 180 days from the date HMLD issues pre-approval of the EEM project, HMLD may terminate any obligation to make Incentive payments.

## **10. Incentive Payment Conditions**

Provided that the Customer has satisfied its obligations, HMLD or its authorized representative 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) Municipal light department'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) HMLD or its authorized representative 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 HMLD or its authorized representative.

## **11. Contractor Shared Savings Arrangements**

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

## **12. 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.

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

Program expenditures, requirements and eligibility, and these Terms & Conditions, may be changed by HMLD or its authorized representative at any time without notice. HMLD 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 HMLD.

## **14. Publicity of Customer Participation**

The Customer grants to HMLD or its authorized representative 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.

## **15. Indemnification and Limitation of HMLD's Liability**

Customer shall indemnify, defend and hold harmless Municipal light department, or its authorized representative 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, HMLD's or its authorized representative'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 HMLD or its authorized representative 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 HMLD 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.

## **16. No Warranties or Representations by HMLD**

(a) HMLD or its authorized representative, DOES NOT ENDORSE, GUARANTEE, OR WARRANT ANY CONTRACTOR, MANUFACTURER OR PRODUCT, AND HMLD or MMWEC 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 HMLD or MMWEC AND HMLD or MMWEC 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 Municipal light department's, or its authorized representative's, OTHER DOCUMENTS.

(b) Neither HMLD or its authorized representative nor any of their 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. HMLD or its authorized representative 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 HMLD or its authorized representative ) 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 Municipal light department or its authorized representative are 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.

## **17. 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 HMLD or its authorized representative reserves the right to deny a vendor or contractor to participate in this Program or provide equipment or services. HMLD also has the right to exclude certain equipment from the Program.

## **18. 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 HMLD, and assumes all risk and liability associated with the reuse and disposal thereof.

## **19. Energy Benefits**

Other than the energy cost savings realized by Customer, HMLD 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.

## **20. 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. HMLD or its authorized representative is not responsible for the payment of any such taxes.

## **21. 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.

## **22. 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 HMLD or its authorized representative.

(f) The provisions of Sections 5, 7, 8, 9, 11, 13, 15, 16, 18, 19, 20, and 21 (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.