

TERMS AND CONDITIONS AND CUSTOMER ACKNOWLEDGEMENT

Prescriptive and Custom Programs



TERMS AND CONDITIONS

1. **PROGRAM OFFER:** This application covers all Pepco Prescriptive Program and Custom Program projects that qualify for incentives. Each project requires pre-approval in accordance with Section 5 prior to the purchase of products or installation. The project must be installed and post-installation documentation specified in Part II – Customer Acknowledgment of this application (“post-installation documentation”) must be received by Pepco’s Prescriptive Program within six (6) months of the Pre-Approval Date (as defined in Section 5) for retrofit projects and Pepco’s Custom Program within twelve (12) months of the Pre-Approval Date for custom and new construction projects. Pepco may cancel this application without liability if customer has (1) not installed the approved project within the above time period, and has (2) not applied to Pepco for a project extension 30 days prior to the expiration of the above time period. **NOTE FOR ALL PROJECTS:** Incentive payments may be denied or reduced for the following reasons: (1) failure to request an extension for delayed installation, (2) failure to follow as-built guidelines, or (3) failure to provide required documentation.
2. **ELIGIBILITY:** Incentives are available to Pepco commercial, industrial, governmental, and institutional electric customers for the purchase and installation of Qualifying Energy Efficiency Measures (“EEMs”) in the Pepco Maryland service territory, subject to these Terms and Conditions. Vacant/empty/non-operating facilities are not eligible for incentives. Accounts with a demand of 60 kW or less over the previous 12 months qualify for the Small Business Program with the exception of: temporary accounts; telecommunications accounts; vacant/empty/non-operations facilities; garages, parking lots, and signage that are not supported by a single eligible small business account. Re-upgrades, defined as the installation of new EEMs replacing EEMs installed and incentivized during the 36-month period following the original project, will be subject to a reduction in incentive based on the length of time remaining in the original 36-month project period.
3. **QUALIFYING EEMs:** Qualifying EEMs are identified in official program materials approved by Pepco. Technologies that purport to save energy through reduction of voltage or power conditioning are not eligible. EEMs that displace/replace electrical energy use with another fuel (fuel switching) are not eligible. All equipment must be brand new. Used or rebuilt equipment is not eligible for incentives. Existing equipment must meet specification requirements and be purchased and operating prior to submitting the application form. Any equipment purchased or installed before pre-approval is ineligible for incentives.
4. **OWNERSHIP OF CAPACITY AND/OR ENERGY/ENVIRONMENTAL SAVINGS CREDITS:** EEMs purchased and installed in whole or in part through incentives provided by this Program are the property of the Customer, subject to any limitations contained within these Terms and Conditions. Notwithstanding the above, Pepco holds sole rights to any electric system capacity credits and energy or environmental credits that may be associated with EEMs for which incentives were received, and Pepco has the right to dispose of these credits in any manner authorized by applicable law or regulation. In no event will activity associated with any energy or environmental credits noted in this Section 4 result in interference with the customer’s ability to operate EEMs as approved in the Program incentive award.
5. **PROJECT APPROVAL:** Pre-approval from Pepco is required for all projects. No project related energy-savings measures may be purchased and/or installed prior to the date of Pepco’s pre-approval (the “Pre-Approval Date”). Pepco reserves the right to pre-inspect any project prior to pre-approval. Pepco reserves the right to approve or disapprove any incentive associated with any proposed EEMs in its sole discretion. No project-related equipment may be ordered or installed prior to the Pre-Approval Date.
6. **EEM COSTS:** The customer must provide copies of all invoices itemizing the new equipment purchased. Each invoice must indicate the date of purchase, the size, type, make, model number, serial number, and part number. All information must be consistent with the submitted manufacturer specification sheets for that equipment.
7. **INCENTIVE PAYMENT:** All incentive payments will also be subject to the following limitations: a) Each Pepco electric account is limited to \$1,000,000 in incentives per program year. b) Pepco reserves the right to deny any incentive application that may result in Pepco exceeding its Program budget; incentives are offered on a first-come, first-served basis and are subject to eligibility, availability of funds, and distribution of incentives across the Pepco customer base. c) The customer may assign the incentive payment to a qualified Service Provider or other third party; provided, however, that whether it be the Service Provider, Pepco customer, or other third party, as indicated in the application, Program incentives will be granted to only one party. d) Incentives are available for custom projects. The incentive is calculated up to \$0.25 per kWh for the first year of projected kWh savings or 50% of total installed project cost for retrofit projects or 75% of incremental costs for new construction projects, whichever is less. A Maryland Public Service Commission specified “Total Resource Cost” test is then used to verify the value of paying an incentive on the project. These calculations are automatically figured in the application workbook.
8. **CUSTOMER TAX OBLIGATION:** The customer or designated incentive recipient is responsible for declaring and paying any and all applicable federal, state, and local taxes that may be owed on any Program incentive payment.
9. **SCHEDULE FOR INCENTIVE PAYMENTS:** Pepco expects to pay all incentives within 4-6 weeks after final review and approval upon project completion. Project completion requires: (1) correct installation of the approved EEMs in the quantity proposed in the application, (2) submission of post-installation documentation to Pepco, and (3) Pepco verification and acceptance of (1) and (2) above, all in accordance with the specifications outlined elsewhere in these Terms and Conditions. Pepco staff and/or its representatives reserve the right to conduct an inspection of the facility to survey the installed equipment, as part of its review process. Eligibility for incentives is contingent on the results of the inspection. Pepco reserves the right to withhold payment of incentives based on the results of the inspection. If Pepco determines that EEMs were not installed in a manner consistent with the approved application, or if unapproved EEMs were installed, or if the installation was not consistent with generally accepted engineering practices, changes may be required before payment is issued. Pepco reserves the right to apply incentives to any of the Customer’s unpaid or overdue accounts, whether in the District of Columbia or Maryland.
10. **VERIFICATION:** Any customer and/or Service Provider receiving an incentive payment may be contacted by an evaluator to verify service/equipment installation or be asked to complete a written, oral, or electronic survey.
11. **COMPLIANCE:** All applications and the work associated with them must comply with all federal, state, and local codes, laws, and regulations. Pepco reserves the right to request and receive permits as a condition of payment of incentive.
12. **REMOVAL OF EQUIPMENT:** The customer agrees, as a condition of participation in the program, to remove and dispose of the equipment being replaced by the EEMs in accordance with all legal requirements. Pepco encourages that equipment be disposed of and/or recycled in an environmentally friendly manner. The customer agrees not to install any of the removed equipment in the Pepco service territory in the District of Columbia or Maryland. The equipment cannot be reinstalled anywhere in the State of Maryland, or transferred to any other party for such installation. Customer is responsible for ensuring all applicable permits and licenses are obtained to effect the removal and installation of equipment.

EmPOWER Maryland programs are funded by a charge on your energy bill. EmPOWER programs can help you reduce your energy consumption and save you money. To learn more about EmPOWER and how you can participate, go to pepco.com/business.

TERMS AND CONDITIONS (CONTINUED)

13. **MONITORING AND EVALUATION FOLLOW UP VISITS:** The customer agrees, for a period of three (3) years after the final incentive payment, to allow Pepco and/or its assigned representatives to conduct on-site inspections to verify that the qualified measures or higher efficiency equipment is installed and to conduct other measurement and verification activities to assess the amount of energy savings achieved. Such activities may require the installation of energy monitoring equipment. The scope of review is limited to determining whether Program conditions have been met. The customer must allow access to the EEMs and related project documentation. Pepco has the right to a refund for incentives paid if, at any time, it learns that the EEMs were not actually and properly installed or were subsequently disconnected within 36 months after installation.
14. **PUBLICITY OF CUSTOMER PARTICIPATION:** Pepco reserves the right to publicize the customer's participation in the Program, including information such as: projected project energy savings, the incentive amount, and other information that does not compromise reasonable customer expectations of confidentiality of proprietary or competitive information. In the event that confidentiality of proprietary or competitive information could be compromised, Pepco will obtain customer permission to make such information public.
15. **PEPCO / PROGRAM LOGO:** Customers and Service Providers may not use the Pepco logo or Program name in any marketing, advertising, or promotional materials without prior written consent from Pepco.
16. **CHANGES TO / CANCELLATION OF THE PROGRAM:** Pepco may change the Program requirements, incentives, or these Terms and Conditions at any time without notice, including suspending acceptance of applications or terminating the Program. In the event of a Program change, pre-approved applications will be processed to completion under the Terms and Conditions in effect at the time of pre-approval by Pepco. Notwithstanding the foregoing, Pepco reserves the right to delay or deny payments to pre-approved applications if such payments may result in exceeding the Program budget. Submission of a completed application does not entitle the customer to Program participation or guarantee payment.
17. **SERVICE PROVIDER SELECTION:** Pepco acknowledges that the customer may select any Pepco approved Service Provider to perform the work proposed in any particular application. Any contractors, distributors, or other market providers performing work associated with any particular application, including completing and submitting the application, need to be Pepco approved Service Providers. If the customer has a particular contractor, distributor, or other market provider that it plans to work with, the customer is encouraged to have the contractor, distributor, or market provider register as a Service Provider. Notwithstanding the foregoing, the customer acknowledges that Pepco has the right, in its sole discretion, to prohibit specific Service Providers from Program participation. Pepco reserves the right to request and be provided with any and all current and applicable business licenses, construction permits, letters of good standing, and/or all other supporting documentation as required by the State of Maryland or its counties from any party directly or indirectly supporting the Pepco customer's participation in the Program. Expired licenses and/or permits will not be accepted. Failure to provide Pepco with this request may result in cancellation of the application and denial of incentives.
18. **LIMITATION OF LIABILITY AND INDEMNIFICATION:** Pepco, its officers, directors, employees, affiliates, contractors and agents (the "Pepco Parties") will not be liable to the customer for any direct, special, indirect, consequential or incidental damages or for any damages in tort (including negligence) caused by any activities associated with the Program and the customer's participation therein. By participating in this Pepco Program, the customer agrees to waive any and all claims, whether arising in contract or tort and to fully release the Pepco Parties from any and all damages, of any kind. The customer will protect, indemnify, and hold harmless the Pepco Parties from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorney's fees and expenses) incurred by or assessed against the Pepco Parties arising out of or relating to the this application or the Program, whether arising in contract or tort.
19. **NO WARRANTIES:** NONE OF THE PEPCO PARTIES ENDORSE, GUARANTEE, OR WARRANT ANY PARTICULAR MANUFACTURER, PRODUCT, CONTRACTOR, SERVICE PROVIDER OR VENDOR, NOR DO THE PEPCO PARTIES PROVIDE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PRODUCT OR SERVICE. THE PEPCO PARTIES ARE NOT LIABLE OR RESPONSIBLE FOR ANY ACT OR OMISSION OF ANY CONTRACTOR HIRED BY THE CUSTOMER (IF ANY) WHETHER OR NOT SAID CONTRACTOR IS A PARTICIPATING PEPCO SERVICE PROVIDER. THE CUSTOMER'S RELIANCE ON WARRANTIES IS LIMITED TO ANY WARRANTIES THAT MAY BE PROVIDED BY ITS CONTRACTOR, VENDOR, MANUFACTURER, ETC. NONE OF THE PEPCO PARTIES ARE RESPONSIBLE FOR ASSURING THAT THE DESIGN, ENGINEERING AND CONSTRUCTION OF THE FACILITY OR INSTALLATION OF THE EEMS IS PROPER OR COMPLIES WITH ANY PARTICULAR LAWS, REGULATIONS, CODES, OR INDUSTRY STANDARDS. NONE OF THE PEPCO PARTIES MAKE, AND NONE ARE AUTHORIZED TO MAKE, ANY REPRESENTATIONS OF ANY KIND REGARDING THE RESULTS TO BE ACHIEVED BY THE EEMS OR THE ADEQUACY OR SAFETY OF SUCH MEASURES.
20. **MISCELLANEOUS:** a) The agreement between the customer and Pepco is composed of all applicable Program forms, including the application, supporting documentation, and these Terms and Conditions. b) The customer acknowledges that the only individuals authorized to bind Pepco under the Pepco Program are Pepco staff and authorized agents of Pepco. c) If any provision of these Terms and Conditions is deemed invalid by any court or administrative body having jurisdiction, such ruling will not invalidate any other provision, and the remaining Terms and Conditions shall remain in full force and effect in accordance with their terms. d) Resolution of disputes concerning these Terms and Conditions, or any other requirement of this application or condition of incentive award, will be governed in all respects by the laws of the jurisdiction in which the customer is located. e) In the event of any dispute, claim or controversy arising out of or relating to the Program or these Terms and Conditions (any such dispute, claim or controversy, a "Dispute") between the parties that cannot be informally resolved, the following procedure will apply. (1) **NOTICE OF DISPUTE.** A party will deliver a written notice (the "Dispute Notice") to the other describing the nature and substance of any Dispute and proposing a resolution of the Dispute. (2) **MANAGEMENT NEGOTIATION.** During the first thirty (30) days following the delivery of the Dispute Notice (and during any extension agreed to by the Parties) (the "Negotiation Period") an authorized manager of customer (the "Customer's Manager") and an authorized manager of Pepco ("Pepco's Manager") will attempt in good faith to resolve the Dispute through negotiations. If such negotiations result in an agreement in principle among such negotiators to settle the Dispute, they will cause a written settlement agreement to be prepared, signed and dated (a "Management Settlement"), whereupon the Dispute will be deemed settled, and not subject to further dispute resolution. (3) **ALTERNATIVE DISPUTE RESOLUTION.** (i) Customer and Pepco (a) acknowledge that it is in their best interests to resolve any Dispute in accordance with the dispute resolution procedures set forth herein and (b) agree to use their best efforts so to resolve any such Dispute. Without limitation, such efforts will include mandatory submission of a Dispute to non-binding mediation. Should such Dispute not be resolved within 90 days after the issuance by one of the parties of a written Request for Mediation (or such longer period as the parties may agree), Pepco and the customer may seek other legal recourse. (ii) Notwithstanding the above, either party may seek injunctive relief to enforce its rights with respect to the use or protection of (a) its confidential or proprietary information or material or (b) its names, trademarks, service marks or logos, in a court of competent jurisdiction in which the party seeking such relief is located. The parties consent to the personal jurisdiction thereof and to sole venue therein only for such purposes. f) **PEPCO AND THE CUSTOMER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT EITHER SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS APPLICATION, THE PROGRAM OR THE TRANSACTIONS CONTEMPLATED BY THIS APPLICATION.**
21. **MUNICIPAL CUSTOMERS:** Municipal customers applying to the Pepco Energy Savings for Business Program may be eligible for the Energy Efficient Communities Program. Under this program, participants will receive one Operations and Maintenance training at no cost, locked-in incentive levels for the duration of the program, and enhanced technical assistance when developing projects and completing applications. As part of this program, we ask that participants identify an Energy Champion – or the main point of contact – who will help to identify eligible projects, monitor/update the status of these projects and meet quarterly with the Pepco team; complete an Operations and Maintenance training; and complete at least one project per year until December 2020. An assigned Account Executive will reach out to eligible customers to discuss program details.

CUSTOMER INFORMATION

Fill out the form below electronically to save time, paper, and hassle.

Project Name: _____ Project ID (located on welcome email): _____

Street Address (of the facility): _____ City: _____ State: ____ Zip: _____

Customer Name (please print): _____ Title: _____

Email: _____ Phone Number: _____

CUSTOMER ACKNOWLEDGEMENT

By signing below, I hereby certify that I have read, that I understand, and that I agree to the Terms and Conditions on pages 1 and 2. As a reminder, pre-approval is required before purchasing or installing equipment.

Customer Signature: _____ Date: _____

Note: Upon project completion, the Pepco customer on record must sign and return the detailed project invoice indicating total project cost, incentive amount, balance of cost to be paid by customer, and acknowledgement of project completion.

PAYMENT INFORMATION

If the Service Provider completing the work or another 3rd party will be receiving the incentive directly, the customer must authorize payment by signing below.

Payment to: Service Provider Other 3rd Party

Customer Signature: _____ Date: _____

Pepco Energy Savings for Business Program

Contact: 1-866-353-5798 | pepcobusiness@icf.com

EmPOWER Maryland programs are funded by a charge on your energy bill. EmPOWER programs can help you reduce your energy consumption and save you money. To learn more about EmPOWER and how you can participate, go to pepco.com/business.

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