

**Efficiency Maine Commercial & Industrial Custom Program
Terms & Conditions**

1. INCENTIVES FOR QUALIFYING ECMS

- a. Efficiency Maine will award financial incentives to Eligible Customers for the purchase and installation of Qualifying ECMS, subject to these Terms and Conditions. By accepting an incentive award, Customer agrees to be bound by these Terms and Conditions.
- b. "Qualifying ECMS" are Prescriptive Electric Conservation Measures identified in official program materials and site-specific Custom Measures approved by Efficiency Maine. Technologies that purport to save energy through reduction of voltage, demand, or power conditioning are not eligible ECMS. Unless explicitly pre-approved, ECMS must be new and covered by warranties.
- c. "Eligible Customers" are all non-residential customers of electric utilities in the State of Maine. Efficiency Maine incentives are awarded only to Eligible Customers and such Customers are ultimately responsible for compliance with these Terms and Conditions.
- d. Businesses whose primary business function is to generate power to be sold into a power market are not eligible for incentives under the Custom Program. Commercial generating station components will not be considered "Qualifying ECMS."
- e. ECMS implemented at multi-family buildings are not eligible for incentives under the Custom Program.

2. OWNERSHIP OF CAPACITY AND/OR ENVIRONMENTAL CREDITS

- a. ECMS 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.
- b. Notwithstanding the above, Efficiency Maine shall be deemed the owner of, and holds exclusive right, title and interest in and to any electric system capacity credits and environmental credits that may be associated with ECMS for which incentives were received, and Efficiency Maine can sell, transfer, and otherwise dispose of these credits in any manner authorized by law or regulation. By accepting an incentive award, Customer expressly and irrevocably conveys all such rights and credits to Efficiency Maine.
- c. In no event shall activity associated with any energy or environmental credits noted in Section 2(b) result in interference with the Customer's sole discretion to operate ECMS as approved in Customer's incentive award.

3. PRE-APPROVAL REQUIRED

- a. Efficiency Maine may explicitly waive the pre-approval and survey requirement for the Customer in writing, Efficiency Maine is under no obligation to process any incentive awards unless it pre-approves the Customer's Incentive Application.

- b. Efficiency Maine has complete discretion to approve or disapprove any proposed ECMs.

4. POST-INSTALLATION VERIFICATION REQUIRED

Efficiency Maine is not obligated to pay any pre-approved incentive awards until it has performed a satisfactory post-installation verification, or it has explicitly waived this requirement for the Customer in writing. If Efficiency Maine determines that ECMs were not installed in a manner consistent with the approved application, or if unapproved ECMs were installed, or if the installation was not consistent with generally accepted engineering practices, it may require changes before making payment. Efficiency Maine will not make payment until it verifies that the Customer has received, as appropriate, final drawings, operation and maintenance manuals, and operator training. Efficiency Maine reserves the right to seek recovery of incentives paid if Qualifying ECMs cannot be located or are not installed in a manner consistent with the provisions of these Terms and Conditions.

5. CUSTOM MEASURE APPLICATIONS AND ANALYSIS

- a. Efficiency Maine will only approve Custom Measure Applications for ECMs that Efficiency Maine believes have reliable and cost effective energy savings potential in the proposed use and site. Efficiency Maine has discretion to approve or disapprove of any Custom Measures proposed.
- b. In addition to completing all required worksheets, the Customer will be required to provide an analysis of the energy and demand reduction potential of the proposed ECMs. Efficiency Maine may require that this analysis be prepared by a licensed Professional Engineer whose competency and experience to perform the requisite analysis has been approved in advance by Efficiency Maine.
- c. Efficiency Maine may independently review the Application and analysis to verify the energy saving and demand reduction potential and the reasonableness of measure and installation cost estimates. Efficiency Maine reserves the right to reject or modify any Customer calculations, based on its analysis.

6. PRE-APPROVED LETTER

After an Application is approved, the Customer will receive written notification of a maximum pre-approved incentive amount. Efficiency Maine will not pay incentives for any ECMs installed prior to the date of the Pre-approved Incentive Letter.

7. INDEPENDENT TESTING

Efficiency Maine reserves the right to deny incentives for any ECMs that have not been favorably assessed or approved by recognized, independent public authorities, such as the Underwriter's Laboratory (UL). Efficiency Maine may, at its discretion, require that the Customer undertake, at its own expense, testing of a proposed ECM that does not carry the Listing Mark by UL, or an equivalent independent testing facility approved in advance by Efficiency Maine.

8. INCENTIVE AMOUNTS

- a. Efficiency Maine reserves the right to adjust and/or negotiate the incentive amount, based upon its independent assessment of appropriate savings or cost estimates.
- b. Once an incentive is pre-approved, Efficiency Maine will pay no more than the approved fraction of the incremental cost to the Customer of purchasing the ECM, or the pre-approved incentive amount, whichever is less. Efficiency Maine may, at its discretion, recognize incremental installation labor costs that are unique to the proposed ECM to the extent that they are reasonable, verifiable, and actually incurred by the Customer. Efficiency Maine has the right to lower the incentive amount if the quantity and/or cost of ECMs actually installed by the Customer differ from the pre-approved amounts. Efficiency Maine has the right to seek a complete refund, and Customer shall be obligated to provide complete reimbursement to Efficiency Maine, for all incentives amounts paid if, at any time, Efficiency Maine learns that the ECMs were not actually and properly installed, were subsequently disconnected, or were installed at a location that was not pre-approved.

9. COST OF EQUIPMENT

The Customer must provide copies of all invoices or other reasonable documentation that verify the costs of purchasing and installing the ECMs, including all materials, labor, and equipment discounts. Invoices must indicate a verifiable breakout of all ECMs purchased for installation under this Agreement. Efficiency Maine also has the right at any time to require invoices from the contractor to determine the price paid by the contractor (including any discounts or incentives) from contractor's supplier for the ECMs.

10. SCHEDULE FOR INCENTIVE PAYMENTS

- a. Efficiency Maine expects (but makes no guarantee) to pay all incentives within thirty (30) days after project completion. Project completion requires:
 - i. Submission to Efficiency Maine of all documentation.
 - ii. Completed installation of the approved ECMs
 - iii. Efficiency Maine's acceptance of (a) and (b) above, all in accordance with the specifications outlined elsewhere in these Terms and Conditions.

11. MONITORING AND EVALUATION FOLLOW-UP VISITS

Efficiency Maine reserves the right to make follow-up visits to a Customer's facility during the 24 months following the actual completion date at a time convenient to the Customer, and with at least one week advance notice. The purpose of the visit(s) is to review the operation of the ECMs for program evaluation purposes, including monitoring their energy performance. The scope of review is limited to determining whether program conditions have been met.

12. CHANGES IN/CANCELLATION OF THE PROGRAM

- a. Efficiency Maine may change the program requirements, incentives, or Terms and Conditions at any time without notice, including suspending acceptance of applications

or terminating the program. Efficiency Maine is not obligated to approve any submitted application that may result in Efficiency Maine exceeding its program budget.

- b. In the event of program change, pre-approved applications will be processed to completion under the Terms and Conditions in effect at the time of the pre-approval by Efficiency Maine.
- c. Submission of a completed application does not entitle the Customer to program participation. Acceptance for program participation occurs only when Efficiency Maine has signed the application and incentive pre-approval form.

13. PUBLICITY OF CUSTOMER PARTICIPATION

By accepting an incentive through the program, the Customer understands that Efficiency Maine reserves the right to disclose certain information about the Customer's participation in the program, including, but not necessarily limited to, the Customer's name and address, the incentive amount, projected energy savings as well as other non-proprietary business information.

14. INSTALLATION SCHEDULE REQUIREMENTS

- a. If the Customer has (a) not engaged in installation of the approved project, and has (b) not applied to Efficiency Maine for a project extension within one year from the date Efficiency Maine pre-approves the project, Efficiency Maine may cancel the Agreement without liability and without any further obligation to Customer.
- b. A Customer who fails to advise Efficiency Maine that a project is complete, or who fails to provide required post-installation documentation as described elsewhere in these Terms and Conditions, within 60 days of project installation may be denied incentive payment.

15. LIMITATION OF LIABILITY; INDEMNIFICATION

- a. Efficiency Maine's sole obligation and total liability under this Agreement will be limited to paying the incentive amounts specified in Customer's application as approved by Efficiency Maine. In no event shall Efficiency Maine or any of its affiliates, agents, or contractors be liable to the Customer or anyone claiming through Customer, for any special, consequential, or incidental damages, including lost profits or lost business opportunities, or for any damages in tort (including negligence) caused by or resulting from any activities in connection with or associated with this Agreement or the program.
- b. The Customer shall protect, indemnify, and hold harmless Efficiency Maine and its trustees, employees, and agents 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 Efficiency Maine arising out of or relating to the Customer's performance of this Agreement and the installation and operation of the ECMs.

- c. Nothing herein shall be construed to waive, release, or diminish any statutory or common law immunities of Efficiency Maine as a governmental entity, all of which are expressly retained.

16. NO WARRANTIES

- a. Efficiency Maine does not endorse, guarantee, or warrant any particular manufacturer or product, and it provides no warranties, express or implied, for any product or services. Efficiency Maine expressly disclaims all warranties relating to the ECMs. The Customer's reliance on warranties is limited to any warranties that may be provided directly by contractors, vendors, etc.
- b. Neither Efficiency Maine nor its consultants are responsible for assuring that the design, engineering and construction of the facility or installation of the ECMs is proper or complies with any particular laws, codes, or industry standards. Efficiency Maine does not make any representations of any kind regarding the results to be achieved by the ECMs or the adequacy or safety of such measures.

17. CUSTOMER MUST PAY ALL TAXES

Incentives received by the Customer may be taxable by the federal, state, and local government. The Customer is responsible for determining any tax obligations and declaring and paying all such taxes. Recipients of incentive award payments must provide their tax identification number for payment processing. Incentive award payments in excess of \$600 made to unincorporated entities will be reported by Efficiency Maine on IRS Form 1099-MISC. If Efficiency Maine permits assignment of incentive award payments from Customer to its installation contractor or equipment vendor, a completed assignment of funds form will be required.

18. VENDOR SELECTION

The Customer may select any vendor or contractor to perform the work contemplated by this application, even after the application is submitted for pre-approval by Efficiency Maine. However, Efficiency Maine has the right to prohibit specific vendors or contractors from program participation.

19. REMOVAL OF EXISTING EQUIPMENT

The Customer agrees, as a condition of participation in the program, to remove and dispose of the equipment being replaced by the ECMs in accordance with all laws, rules, and regulations. The Customer agrees not to reinstall any of this equipment anywhere in the State of Maine, or transfer it to any other party for installation in the State of Maine.

20. ECM LIFE

By accepting an Efficiency Maine incentive, Customer hereby agrees that it will not alter, modify or discontinue use of the efficiency measures without prior written approval from Efficiency

Maine and that efficiency measures funded by Efficiency Maine will be used for their rated useful life.

21. DATA IN SUPPORT OF ENERGY SAVINGS AND EMISSIONS REDUCTIONS.

- a. The Trust may access Recipient's utility data to track program energy saving and calculate greenhouse gas emission reduction impacts.
- b. Recipient agrees to allow the Trust or its agents access to facilities and records to collect data needed to measure and verify electricity savings and fuel reductions (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices, and site occupancy levels).
- c. Recipient agrees to provide the Trust or its agents associated data from a period prior to the start of the Project as necessary to establish baseline energy and/or fuel use.

22. MISCELLANEOUS

- a. These Terms and Conditions, along with the Customer's Incentive Application and Efficiency Maine's pre-approval notification and its conditions of approval specific to Customer's application, constitute the Agreement of the parties and supersede any prior discussions, understandings, and agreements, whether oral or in writing. The Agreement may be amended only in writing signed by the parties.
- b. Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.
- c. The Customer acknowledges that the only individuals authorized to bind Efficiency Maine under this Agreement are Efficiency Maine staff and specifically authorized agents of Efficiency Maine.
- d. 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 Terms and Conditions shall remain in full force and effect in accordance with their terms.
- e. In the event of any dispute concerning these Terms and Conditions, or any other requirement of this program or condition of incentive award, resolution will be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this agreement shall be brought in State of Maine administrative or judicial forums. The Customer consents to personal jurisdiction in the State of Maine.