

Terms and Conditions & Customer Acknowledgement

Building Tune-up Program



An Exelon Company

TERMS AND CONDITIONS

1. **PROGRAM OFFER:** This application covers Pepco Commissioning Services that qualify for incentives. Each project requires pre-approval in accordance with Section 4 prior to implementing Commissioning Services. The project must be completed and all post-completion documentation specified in Part II – Customer Acknowledgment of this application and/or in the Building Tune-up / Monitoring-Based Commissioning (BT/MBCx) Technical Resource Manual (“post-completion documentation”) must be submitted within four (4) months for the Pre-Approval Date (as defined in Section 4) for HVAC Tune-up Projects and within eighteen (18) months of the Pre-Approval Date for Building Tune-up and Monitoring-Based Commissioning Projects. Pepco may cancel this application without liability if customer has (1) not completed 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 completion, (2) failure to follow guidelines, or (3) failure to provide required documentation.
2. **ELIGIBILITY:** Incentives are available to Pepco commercial, industrial, governmental, and institutional electric customers in the Pepco Maryland service territory for the completion of Commissioning Services (as defined in the EBT/MBCx Technical Resource Manual) and/or the completion of HVAC Tune-up once every five (5) years in the Pepco Maryland service territory, subject to these Terms and Conditions and the requirements included in the Full Building Tune-up, Monitoring-Based Commissioning, and HVAC Tune-up Technical Sheets.
3. **OWNERSHIP OF CAPACITY AND/OR ENERGY/ENVIRONMENTAL SAVINGS CREDITS:** Pepco holds sole rights to any electric system capacity credits and energy or environmental credits that may be associated with the Commissioning Services 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 3 result in interference with the customer’s ability to operate its facility.
4. **PROJECT APPROVAL:** Pre-approval from Pepco is required for all Building Tune-up projects. No project related energy-savings measures may be purchased 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 exclude any proposed energy saving measures based on engineering analysis. Pepco reserves the right to approve or disapprove any proposed projects in its sole discretion.
5. **COMMISSIONING SERVICES COSTS:** The customer must provide copies of all invoices or other reasonable documentation that verify the costs of completing Commissioning Services.
6. **INCENTIVE PAYMENT:** Incentive payments will be subject to the following limitations: a) Each Pepco electric account is limited to \$1,000,000 in incentives from Pepco 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.
7. **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.
8. **SCHEDULE FOR INCENTIVE PAYMENTS:** Pepco expects to pay all incentives within 4-6 weeks after final review and approval upon project completion with the exception of Phase I projects. Additional requirements are identified in the application process regarding this incentive payment. Project completion requires: (1) submission to Pepco of all post-completion documentation, and (2) 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 perform a post-inspection of the facility to survey the installed or serviced equipment, as part of its review process. If Pepco determines that Commissioning Services were not completed in a manner consistent with the approved application, or if the Commissioning Services were not consistent with generally accepted practices, changes may be required before payment is issued. Pepco will not make payment until it has verified that the customer has received, as appropriate, final drawings, operation and maintenance manuals, and operator training, and is substantially satisfied with the completion of all Commissioning Services. 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.
9. **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.
10. **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.
11. **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 facility and related project documentation. Pepco has the right to a refund for incentives paid if, at any time, it learns that the Commissioning Services were not actually and properly performed.
12. **PUBLICITY OF CUSTOMER PARTICIPATION:** Pepco reserves the right to publicize a 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.
13. **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.
14. **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 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 a payment may result in exceeding the Program budget. Submission of a completed application does not entitle the customer to Program participation or guarantee payment.

TERMS AND CONDITIONS (CONTINUED)

15. **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.

16. **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 this 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 this application or the Program, whether arising in contract or tort.

17. **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 COMMISSION 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.

18. **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 shall not invalidate any other provision, and the remaining Terms and Conditions will 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 ("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 the 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 nonbinding 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.**

I. CUSTOMER INFORMATION

Project Name: _____
Project ID (located on welcome email): _____
Street Address (of the facility): _____
City: _____ State: _____ Zip: _____
Customer Name (please print): _____ Title: _____
Email: _____ Phone Number: _____

II. 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.

III. 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: _____

Account# _____

Units

Single _____

Dual _____

Pepco Energy Savings for Business Program

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