

2021

Existing Buildings

Equipment & Systems Performance Optimization

Tracks: Targeted Systems and Whole Building & Process Tuning



www.masssave.com/en/learn/business/ESPO

Program Administrators

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Equipment & Systems Performance Optimization Program Description

The **Equipment & Systems Performance Optimization (ESPO) Program** is designed for commercial and industrial customers to optimize equipment and systems as well as building energy controls and process system operations, which includes retro-commissioning (RCx) and operations & maintenance (O&M) optimization. Through ESPO, Program Administrators (PAs) offer assistance for investigations to identify these typically low cost energy efficiency improvements and incentives to implement measures. Implementation incentives are based on energy savings and customers have the ability to achieve additional performance-based incentives if certain savings levels relative to annual usage are achieved.

Under the Equipment & Systems Performance Optimization Program, Mass Save Program Administrators offer multiple options (Tracks) for customers depending on needs, preferences and available resources. Please contact your Program Administrator to determine which Track is best for your facility.

For general questions about the ESPO Program, please contact ESPO-Program@eversource.com regardless of which PA territory your facility is in.

Track	Low Cost Tuning Measures	Targeted Systems Tuning	Whole Building & Process Tuning
Overview	Individual measure approach to RCx	Individual system or systems approach to RCx	Comprehensive full building or process approach to RCx
Application Type	Prescriptive	Custom	Custom

This application is for the Targeted Systems Tuning and the Whole Building & Process Tuning Tracks. For a prescriptive approach, please see the Low Cost Tuning Measures Track Application. For customers pursuing Monitoring Based Commissioning at the equipment, system or whole building/process level, please see the Monitoring Based Commissioning Track Application. These additional ESPO applications are available at www.masssave.com/en/learn/business/ESPO.

Equipment & Systems Performance Optimization Program

TRACK	
Targeted Systems Tuning	Whole Building & Process Tuning
<p>In facilities where specific systems could benefit from tuning and performance optimization, the Targeted Systems Tuning Track offers just that – an in-depth investigation and tuning process for independent building systems or process lines. Rather than exploring the entire facility for optimization and controls opportunities, the Program Administrators utilize this pathway to work with Customers to target the system(s) with energy savings potential at a customer site. This path is a comprehensive option with a modest level of customer required resources for engagement. See below for more information on eligible systems.</p> <p><i>Note: Customers may elect to tune up to three targeted systems under a given application however if more than one system is being considered, explore the Whole Building & Process Tuning Track where more comprehensive investigations and savings value are available.</i></p>	<p>In larger facilities, where annual electric usage is greater than 5,000,000 kWh and where a functional control system is in place, the Whole Building & Process Tuning Track enables customers to capture comprehensive energy savings and improved building operations and comfort. Manufacturing or Industrial customers are also able to utilize a comprehensive tuning approach for their systems through this Track. In this Track, the involvement of the facility staff is increased given the broader scope and longer timeline of a comprehensive approach in conjunction with the increased level of committed PA resources.</p> <p><i>Note: There is no minimum threshold of gas usage necessary to participate in this Program. In the event a customer has substantial gas usage but does not qualify based on the electric usage threshold, the customer will likely qualify. Please contact your PA.</i></p>
Provided Resources	
Targeted Systems Tuning	Whole Building & Process Tuning
<p>The Tuning Investigation can be fully funded for pre-approved projects at the Program Administrator's discretion. Before applying, please contact your Program Administrator to discuss Track options and resources offerings for your specific case. Your PA will also inform you if On-site Training for tuned systems, processes or buildings is available in your territory.</p> <p><i>Customers who do not qualify or elect not to receive resource support for the Investigation are still eligible to receive implementation and performance incentives based on approved savings. Please contact you PA prior to beginning the project regardless.</i></p>	
The value of this resource offering can be up to \$12,000 per site.	The value of this resource offering can be up to \$30,000 per site.
Incentive Amount	
Targeted Systems Tuning	Whole Building & Process Tuning
Implementation incentives are provided on a \$0.17/kWh and \$1.20/therm saved basis for approved energy savings.	

Equipment & Systems Performance Optimization Program Continued

Performance Bonus	
Targeted Systems Tuning	Whole Building & Process Tuning
<p>An additional Performance Incentive may be available to customers who achieve an annualized savings relative to total facility usage of at least 2.75% for electric and 1.5% for gas. The Performance Bonus Incentive rate is \$0.03/kWh and \$0.20/therm times the total project's annual approved savings. Please contact your Program Administrator for more details on how the Performance Bonus Incentive will be qualified.</p> <p><i>For clarity, savings from multiple systems tuned concurrently as part of the same project can be summed to perform this calculation.</i></p>	
Program Eligibility Requirements	
Targeted Systems Tuning	Whole Building & Process Tuning
<ol style="list-style-type: none"> 1. Systems must already be installed in an existing commercial, industrial, institutional, educational, or municipal building within an electric Program Administrator's service territory. 2. Systems/facility must not be at end of life or nearing planned retirement. 3. Proposed projects cannot be part of a larger, time-dependent, new construction or major renovation project that is mandated by Massachusetts State Building Code. 4. Systems/facilities must average 2,000 or more operating hours per year. 5. Implemented measures must not have participated in the Custom Retro-Commissioning or Pay-for-Performance Programs within the past five years. 	
Track Eligibility Requirements	
Targeted Systems Tuning	Whole Building & Process Tuning
<p>Specific building or process systems eligible for this Track include, but are not limited to:</p> <ul style="list-style-type: none"> • Chiller • Compressed Air • Airflow Management • Boiler – Steam & Hot Water • Scheduling/Setpoint Optimization • Rooftop Units (RTUs) • Refrigeration • Pumping • Cold Storage • Waste Energy Recovery • Production Systems or Lines 	<p>Facilities eligible for the Whole Building Tuning & Process Tuning Track must:</p> <ul style="list-style-type: none"> • Consume more than 5,000,000 kWh annually <ul style="list-style-type: none"> — Exceptions to the minimum electric usage are available based on level of gas usage as there is no explicit minimum threshold of gas usage necessary to participate in this Program - please contact your PA for information • Have a functional control system in place
Additional Conditions	
Targeted Systems Tuning	Whole Building & Process Tuning
<ol style="list-style-type: none"> 1. Facilities must maintain the tuning measure for at least the lifetime of the project, or until a business operational need dictates the need for adjustment, at which point the customer should contact the Program Administrator for guidance. 2. Implemented measures and corresponding approved savings are subject to post-installation verification, including but not limited to the right for the Program Administrator to inspect upon implementation and/or to revisit the customer site to assess tuning status for the lifetime of the measure. If a measure is found out-of-tune, the Program Administrator will seek to facilitate re-tuning of the measure or measures. 	

For additional information on these Tracks and their process please see the Project Checklist included in the compressed folder this application was originally downloaded in.

1. Confirm Eligibility

If you have any questions on whether a project is eligible for this Retrofit Program, please contact your PA before continuing with the application or beginning the work.

2. Pre-Approval for Investigation

- I. Complete & Submit Part 1 of the Application including the Track Screening Questionnaire to ESPO-Program@eversource.com
- II. Work with PA to Identify Vendor(s) & Track
- III. Define Relevant Baseline & Approach to Savings Calculations
- IV. Receive Pre-Approval for Investigation

3. Tuning Investigation & Reporting

- I. Perform Site Visit(s) for Tuning Investigation
- II. Complete & Submit Part 2 of the Application
 - Fill out Part 2 of this application and submit to your PA along with the Investigation Report and supporting energy engineering calculations.
- III. Receive Pre-Approval for Implementation

4. Implementation

- I. Perform Tuning Implementation

5. Completion

- I. Submit Signed Final Documents
 - Within 30 days of the implementation, submit the following signed documents to your Program Administrator
 - i. Any changes in scope of work with corresponding updated calculations (if needed)
 - ii. Application, Parts 1 and 2
 - iii. Invoices, work orders, or other pre-approved means to verify implementation
- II. Receive Incentives
- III. Maintain Tuning Measures
 - Ensure Implemented Tuning Measures are Maintained
 - Permit PA to Verify Project Persistence

ALL FIELDS ON THIS PAGE ARE REQUIRED TO COMPLETE YOUR APPLICATION

Indicate the Program Administrator for this Application

☐ Berkshire Gas ☐ Cape Light Compact ☐ Eversource ☐ Liberty Utilities ☐ National Grid ☐ Unitil

CUSTOMER/ACCOUNT HOLDER INFORMATION

COMPANY NAME		CONTACT PERSON		APPLICATION DATE
INSTALL SITE		PHONE	FAX NUMBER	
EMAIL ADDRESS		SQUARE FEET (COVERED BY THIS APPLICATION)		
STREET ADDRESS		CITY	STATE	ZIP
MAILING ADDRESS (IF DIFFERENT)		CITY	STATE	ZIP
ELECTRIC COMPANY NAME		ELECTRIC ACCOUNT NUMBER		
GAS COMPANY NAME		GAS ACCOUNT NUMBER		
BUILDING TYPE (PLEASE PLACE "X" IN APPROPRIATE BALLOT BOX)				
<input type="checkbox"/> ASSEMBLY	<input type="checkbox"/> FAST FOOD	<input type="checkbox"/> HOTEL	<input type="checkbox"/> MULTI STORY RETAIL	<input type="checkbox"/> RELIGIOUS
<input type="checkbox"/> AUTOMOTIVE	<input type="checkbox"/> FULL SERVICE RESTAURANT	<input type="checkbox"/> LARGE REFRIGERATED SPACE	<input type="checkbox"/> MULTIFAMILY HIGH-RISE	<input type="checkbox"/> K-12 SCHOOL
<input type="checkbox"/> BIG BOX	<input type="checkbox"/> GROCERY	<input type="checkbox"/> LARGE OFFICE	<input type="checkbox"/> MULTIFAMILY LOW-RISE	<input type="checkbox"/> SMALL OFFICE
<input type="checkbox"/> COMMUNITY COLLEGE	<input type="checkbox"/> HEAVY INDUSTRIAL	<input type="checkbox"/> LIGHT INDUSTRIAL	<input type="checkbox"/> OTHER:	<input type="checkbox"/> WAREHOUSE
<input type="checkbox"/> DORMITORY	<input type="checkbox"/> HOSPITAL	<input type="checkbox"/> MOTEL		

PAYMENT METHOD (PAYEE MUST SUBMIT A W-9 FORM)

PAYMENT TO:	<input type="checkbox"/> CUSTOMER <input type="checkbox"/> VENDOR/INSTALLER	CUSTOMER — TAX ID# (REQUIRED)	VENDOR/INSTALLER — TAX ID# (REQUIRED IF RECEIVING INCENTIVE)
CHECK PAYABLE TO:	CUSTOMER COMPANY TYPE: <input type="checkbox"/> INC. <input type="checkbox"/> NOT INCORP. <input type="checkbox"/> EXEMPT	VENDOR COMPANY TYPE: <input type="checkbox"/> INC. <input type="checkbox"/> NOT INCORP. <input type="checkbox"/> EXEMPT	

VENDOR INFORMATION

VENDOR/INSTALLER	CONTACT NAME		
STREET ADDRESS	CITY	STATE	ZIP
PHONE	EMAIL ADDRESS		
DATE	VENDOR/INSTALLER AUTHORIZED SIGNATURE (NOT APPLICABLE IF CUSTOMER IS PAYEE.) X		

CUSTOMER ACCEPTANCE OF TERMS

PRE-INSTALLATION			ANTICIPATED COMPLETION DATE
<input type="checkbox"/> I CERTIFY THAT ALL STATEMENTS MADE IN THIS APPLICATION ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON THE BACK OF THIS FORM.			
DATE	PRINT NAME	AUTHORIZED SIGNATURE X	
POST-INSTALLATION			
<input type="checkbox"/> I CERTIFY THAT I HAVE SEEN THE ENERGY EFFICIENCY MEASURES THAT HAVE BEEN INSTALLED AND I AM SATISFIED WITH THEIR INSTALLATION.			
DATE	PRINT NAME	AUTHORIZED SIGNATURE X	

FOR PROGRAM ADMINISTRATORS ONLY

REQUIRED INSPECTIONS	DATE	INSPECTOR	PROJECT COSTS:	
PRE-INSPECTION:				
POST INSPECTION:				
APPROVAL	DATE	PROGRAM MANAGER	LABOR \$:	
PRE-APPROVED INCENTIVE:			MATERIAL \$:	
FINAL INCENTIVE:				

Part 1: Track Screening Questionnaire (To Be Completed By Customer)

Overview

Mass Save Program Administrators (PAs) want to ensure that the chosen approach to retro-commissioning suits your needs and provides you with energy and cost savings. To do this, your organization's decision makers will need to consider the resources you can dedicate and what goals you are trying to achieve. This questionnaire will begin the discussion with your Program Administrator about what support and services the ESPO Program can offer to help you accomplish your goals. To the best of your abilities, please answer these questions in Microsoft Word or Adobe PDF format and send to ESPO-Program@eversource.com along with the required account information on the prior page.

Questionnaire –

1. Financial Criteria: Please note that while controls measures are low cost relative to large capital projects, it is important to understand that costs to implement will exist, including but not limited to the time and attention of site staff. Your Program Administrator is here to mitigate these costs, however knowing your organizations limits will help your PA find the right approach and combination of resources to offer. Please answer the following to the best of your abilities.
 - a. What amount is the organization willing to invest in order to achieve controls-and performance optimization-based energy savings?
\$ _____
 - b. What is your required maximum simple payback period when incentives are included?
_____ year(s)
2. Resources & Capabilities:
 - a. What sort of staff time are you able to allocate to implementation of controls and operations & maintenance projects? This could include vendor walk-throughs, trainings, or time to implement.
_____ hours/week or _____ total hours
 - b. Do you work with an existing controls vendor or service provider? If so, who and in what capacity?

 - c. Do you already have an idea who would be completing the retro-commissioning investigation and/or implementation? If so, who and in what capacity? Please identify if you need recommendations on qualified vendors.
Investigator: _____
Implementer: _____
3. Potential Projects:
 - a. What type of project are you looking to implement? Do you have an estimate on the savings potential? Attach any supporting documents if available. If you're unsure what sort of project is right for your facility, please reach out to ESPO-Program@eversource.com for guidance.

Part 2: Required Energy Savings Data

Which Track are you applying for? (Please check only one.)

☐ Targeted Systems Tuning ☐ Whole Building & Process Tuning

If Targeted Systems Tuning is selected, please list which system(s) are included in this application:

The following form may be filled out for preliminary project submittal and review, but a final Custom Project information package must also be submitted in electronic format. Contact a Program Administrator's Technical Representative for details.

Proposed Equipment Specification (Facility Detail)

BUILDING, ROOM AND EQUIPMENT IDENTIFICATION (Installation Site) _____

DESCRIPTION OF PROJECT

Existing System: Measure Description

Proposed System: Measure Description

Manufacturer Incentives, Manufacturer Discounts, Taxes, and/or Salvage Values

INTERNAL USE ONLY:

MEASURE CODE _____ **MEASURE DESCRIPTION** _____

Electric Energy (kWh) and Demand (kW) Reduction

Please provide the total Electric Energy (kWh) and Demand (kW) reduction that occurs during the time periods listed below.

	kWh				Total Percent Energy Savings on Peak ***	
	Summer		Winter			
Peak Energy		kWh		kWh		%
Off-Peak Energy		kWh		kWh		
Total Estimated Annual kWh Savings**						kWh

	kW				
	June	July	August	December	January
Average Peak*					

Estimated Savings with Calculations: Provide Calculations that show the following:

1. First Year kWh savings (annual)
2. Winter Peak Energy kWh: 7AM – 11PM, weekdays except holidays, October to May
3. Winter Off-Peak Energy kWh savings: 11PM – 7AM weekdays, all day weekends and holidays, October to May
4. Summer Peak Energy kWh savings: 7AM – 11PM, weekdays except holidays, June to September
5. Summer Off-Peak Energy kWh savings: 11PM – 7AM weekdays, all day weekends and holidays, June to September
6. Summer Average Demand kW reduction: 1PM – 5 PM, weekdays except holidays, June to August
7. Winter Average Demand kW reduction: 5PM – 7 PM, weekdays except holidays, December and January

* **Average Peak kW:**

Example: Assume the demand savings is 10 kW whenever a plant is in operation and the plant shuts down at 6pm, then the average demand reduction in winter is 5 kW (10 kW ÷ 2 hours = 5 kW)

** **Total Estimated Annual kWh Savings:** The sum of all the Summer and Winter Peak and Off-Peak kWh Savings

*** **Total Percent Energy Savings on Peak:** The sum of the Summer and Winter Peak kWh divided by the Total Annual kWh Savings

Gas Energy (Therm) Reduction

Annual Gas Savings Inputs (Therms)			
Heating (Seasonal)	Process / Hot Water (Non-Heating)	Other (Year Round)	Total

Cost Estimates

Provide back-up documentation for all material and labor costs, broken down by major pieces of equipment and project components. Sales tax may not be included. Adjust for salvage/resale value of equipment being replaced. Enter summarized costs in the table below.

Cost Estimates

Measure	Cost (\$)
Estimated Material Cost	
Estimated Labor Cost	
Estimated Total Cost	

Non-Electric / Non-Gas Benefits (Impacts)

Installing the proposed measure may result in significant savings or possibly increased costs for the owner beyond electric and natural gas savings. Examples include water, sewer, fossil fuel and labor costs. These costs are to be assessed and quantified in the support documentation. These effects are to be combined and reported in the categories provided in the following table.

Non-Electric, Non-Gas Benefits (Impacts)					
Oil (MMBtu)	Propane (MMBtu)	Water (Gallons)	Sewer (Gallons)	Annual O&M / Labor / Materials (\$)	Other One-Time (\$)

Minimum Requirements Document

See attached file for examples. The blank template must be used for multiple measures or complex installations that require more space than provided below.

Energy Conservation Measures

APPLICATION # _____ CUSTOMER NAME _____

This form is to be completed by a Program Administrator's Technical Representative or designated Technical Assistance Contractor to specify herein minimum equipment and operational requirements of the proposed system. This requirements document shall address the criteria necessary to be met to achieve the demand and energy savings estimated in the engineering analysis for this project. Testing and submittals may be required as further verification of system compliance. Use additional sheets, if necessary. These requirements must be met before the Company's incentives are paid.

Equipment Requirements: Provide a list of equipment or materials to be installed as part of this project. Include manufacturer, model, HP or kW ratings, BTU/H or thermal efficiency rating, etc. Post-Installation Inspection Record (Check one) ☐ OK ☐ Not OK

Operational Sequences Requirements: Provide a description of equipment operating sequences, set points, operating schedules, balancing requirements (such as flow, velocity, head, suction, etc.) or any other operating parameters to obtain the estimated energy savings.

Post-Installation Inspection Record (Check one) ☐ OK ☐ Not OK

Documentation: List any written documentation that should be required to verify, operate or maintain the equipment being installed or controlled. This information may include equipment specification sheets, test reports, construction drawings, sequences of operation, etc.

Post-Installation Inspection Record (Check one) ☐ OK ☐ Not OK

Other Requirements Or Comments: Describe any requirements for demolition, removal, or decommissioning of existing equipment.

Post-Installation Inspection Record (Check one) ☐ OK ☐ Not OK

The pre-approved incentive is subject to the Company's post-installation inspection of final specifications, drawings and operation of the proposed equipment. In the event the proposed system is altered from the above description, notify the Company of the change prior to the equipment purchase and installation as the change in design and operation may impact the incentive.

TECHNICAL REPRESENTATIVE

DATE

CUSTOMER SIGNATURE

DATE

1. Incentives

Subject to these Terms & Conditions, the PA will pay Incentives to Customer for the installation of EEMs.

2. Definitions

- (a) "Approval Letter" means the letter issued by PA stating PA's approval of Customer's application, the maximum approved Incentives, required date of EEM completion, any changes to Customer's application and any other requirements of the PA related to the Incentives.
- (b) "Customer" means the commercial and industrial ("C&I") customer maintaining an active account for service with either a gas or electric distribution company.
- (c) "EEMs" are those energy efficiency measures described in the Program Materials or other Custom Measures that may be approved by the PA.
- (d) "Facility" means the Customer location in Massachusetts served by the PA where EEMs are to be installed.
- (e) "Incentives" means those payments made by the PA to Customer pursuant to the Program and these Terms and Conditions. Incentives may also be referred to as "Rebates".
- (f) "Minimum Requirements Document" means the minimum requirements document that may be required by the PA, which, if so required, will be submitted with Customer's application and approved by PA.
- (g) "Program" means any of the energy efficiency programs offered to a C&I Customer by PA.
- (h) "PA" or "Program Administrator" means The Berkshire Gas Company, or Cape Light Compact JPE, or Eversource Energy, or Liberty Utilities, or National Grid, or Unitil, as applicable.
- (i) "Program Materials" means the documents and information provided or made available by the PA specifying the qualifying EEMs, technology requirements, costs and other Program requirements.

3. Application Process and Requirement for PA Approval

- (a) The Customer shall submit a completed application to the PA. The Customer may be required to provide the PA with additional information upon request by the PA. Customer will, upon request by the PA, provide a copy of the as-built drawings and equipment submittals for the Facility after EEMs are installed. To the extent required by the PA or by applicable law, regulation or code, this analysis shall be prepared by a Professional Engineer licensed in the state where the Facility is located.
- (b) To be eligible for gas funded EEM's Customer must have an active natural gas account. To be eligible for electric funded EEM's a Customer must have an active electric account. Customers must meet any additional eligibility requirements set forth in the Program Materials.
- (c) The PA reserves the right to reject or modify Customer's application. The PA may also require the Customer to execute additional agreements, or provide other documentation prior to PA approval. If PA approves Customer's application, PA will provide Customer with the Approval Letter.
- (d) The PA reserves the right to approve or disapprove of any application or proposed EEMs.
- (e) Sections 3(a)-(c) do not apply in the event that the Program Materials explicitly state that no Approval Letter is required for the Program. In such an event, Customer must submit to PA the following: (i) completed and signed Program rebate form, (ii) original date receipts for purchase and installation of EEMs, and (iii) any other required information or documentation within such time as Program Materials indicate.

4. Pre- and Post-Installation Verification; Monitoring and Inspection

- (a) Customer shall cooperate and provide access to Facility and EEM for PA's pre-installation and post-installation verifications. Such verifications must be completed to PA's satisfaction.
- (b) Customer agrees that PA may 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.

5. Installation Schedule Requirements

If the Customer does not complete installation of the approved EEMs within the earlier of the completion date specified in the Approval Letter or twelve (12) months from the date the PA issues written pre-approval of the EEM project, the PA may terminate any obligation to make Incentive payments.

6. Incentive Amounts, Requirements for Incentives and Incentive Payment Conditions

- (a) The PA reserves the right to adjust and/or negotiate the Incentive amount. PA will pay no more than the cost to Customer of purchasing and installing the EEM, the calculated incremental cost, the prescriptive rebate on the form, or the amount in the Approval Letter (unless such Approval Letter is not required), whichever is less.
- (b) PA shall not be obligated to pay the Incentive amount until all the following conditions are met: (1) PA approves Customer's application and provides the Approval Letter (unless an Approval Letter is not required by the terms of the Rebate), (2) satisfactory completion of pre-installation and post-installation verifications by PA, (3) purchase and installation of EEMs in accordance with Approval Letter, Program Materials, Minimum Requirements Document, Customer's application and these Terms and Conditions, (4) all applicable permits, licenses and inspections have been obtained by Customer, (5) PA's receipt of final drawings, operation and maintenance manuals, operator training, permit documents, and other reasonable documentation, and (6) PA's receipt of all invoices for the purchase and installation of the EEMs.
- (c) All EEM invoices will include, at the minimum, the model, quantity, labor, materials, and cost of each EEM and/or service, and will identify any applicable discounts or other incentives.
- (d) PA reserves the right, in its sole discretion, to modify, withhold or eliminate the Incentive if the conditions set forth in Section 6(b) are not met.
- (e) Upon PA's written request, Customer will be required to refund any Incentives paid in the event that Customer does not comply with these Terms and Conditions and Program requirements.
- (f) PA shall use commercially reasonable efforts to pay the Incentive amount within forty-five (45) days after the date all conditions in Section 6(b) are met.

7. Contractor Shared Savings Arrangements

If EEMs are being installed by a contractor under a shared savings arrangement, in which the contractor's compensation is based on the savings achieved, the PA maintains the right to determine the cost of purchasing and installing the EEMs.

8. Maintenance of EEMs

Customer shall properly operate and maintain the EEMs in accordance with the manufacturer's recommendations and the terms thereof for the life of the equipment.

9. Program/Terms and Conditions Changes

Program terms and materials (including these Terms & Conditions) may be changed by the PA at any time without notice. The PA 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 Approval Letter.

10. Publicity of Customer Participation

The Customer grants to the PA the absolute and irrevocable right to use and disclose for promotional and regulatory purposes (a) any information relating to the Customer's participation in the Program, including, without limitation, Customer's name, project energy savings, EEMs installed, and incentive amounts, and (b) any photographs taken of Customer, EEMs, or Facility in connection with the Program, in any medium now here or hereafter known.

11. Indemnification and Limitation of the PA's Liability

To the fullest extent allowed by law, Customer shall indemnify, defend and hold harmless PA, its affiliates and their respective contractors, officers, directors, members, 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, caused or alleged to be caused in whole or in part by any actual or alleged act or omission of the Customer, or any contractor, subcontractor, agent, or third party hired by or directly or indirectly under the control of the Customer, including any party directly or indirectly employed by or under the control of any such contractor, subcontractor, agent, or third party or any other party for whose acts any of them may be liable.

To the fullest extent allowed by law, the PA's aggregate liability, regardless of the number or size of the claims, shall be limited to paying approved Incentives in accordance with these Terms and Conditions and the Program Materials, and the PA and its affiliates and their respective contractors, officers, directors, members, employees, agents, representatives shall not be liable to the Customer or any third 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 PA 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.

12. No Warranties or Representations by the PA

- (a) THE PA DOES NOT ENDORSE, GUARANTEE, OR WARRANT ANY CONTRACTOR, MANUFACTURER OR PRODUCT, AND THE PA 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 PA AND THE PA 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 PA'S OTHER DOCUMENTS.
- (b) Review of the design and installation of EEMs by PA is limited solely to determine whether Program requirements have been met and shall not constitute an assumption by PA of liability with respect to the EEMs. Neither the PA 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 PA 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) PA is not a manufacturer of, or regularly engaged in the sale or distribution of, or an expert with regard to, any equipment or work.
- (d) No activity by the PA includes any kind of safety, code or other compliance review.

13. Customer Responsibilities

Customer is responsible for all aspects of the EEMs and related work including without limitation, (a) selecting and purchasing the EEMs, (b) selecting and contracting with the contractor(s), (c) ensuring contractor(s) are properly qualified, licensed and insured, (d) ensuring EEMs and installation of EEMs meet industry standards, Program requirements and applicable laws, regulations and codes, and (e) obtaining required permits and inspections. PA reserves the right to (a) deny a vendor or contractor providing equipment or services, and (b) exclude certain equipment from the Program.

14. Removal of Equipment

The Customer shall properly remove and dispose of or recycle the equipment, lamps and components in accordance with all applicable laws, and regulations and codes. Customer will not re-install any of removed equipment in the Commonwealth of Massachusetts or the service territory of any affiliate of the PA, and assumes all risk and liability associated with the reuse and disposal thereof.

15. Energy Benefits

Other than the (i) the energy cost savings realized by Customer, (ii) energy or ancillary service market revenue achieved through market sensitive dispatch, (iii) alternative energy credits, and (iv) renewable energy credits, the PA has the unilateral rights to apply for any credits or payments resulting from the Program or EEMs. Such credits and payments include but are not limited to: (a) ISO-NE capacity, (b) forward capacity credits, (c) other electric or natural gas capacity and avoided cost payments or credits, (d) demand response program payments. Except for the credits and payments set forth in (i)-(iv) of this Section, Customer agrees not to, directly or indirectly, file payments or credits associated with the Program or EEMs, and further will not consent to any other third party's right to such payments or credits without prior written consent from the PA. PA's rights under this Section are irrevocable for the life of the EEMs unless the PA provides prior written consent.

16. 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 PA is not responsible for the payment of any such taxes.

17. Counterpart Execution; Scanned Copy.

Any and all Program related agreements and documents may be executed in several counterparts. A scanned or electronically reproduced copy or image of such agreements and documents bearing the signatures of the parties shall be deemed an original.

18. 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. Any claim or action arising under or related to the Program or arising between the parties shall be brought and heard only in a court of competent jurisdiction located in 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 PA.
- (f) Sections 4(b), 10, 11, 12, 14, 15 & 18 shall survive the termination or expiration of the Customer's participation in the Program.