

# Program Terms and Conditions Acknowledgment

Together, we make good happen for Massachusetts: Berkshire Gas, Blackstone Gas Company, Cape Light Compact, Columbia Gas, Eversource, Liberty Utilities, National Grid, and Unitil. As one, we form Mass Save®, with the common goal of helping residents and businesses across Massachusetts save money and energy, leading our state to a clean and energy-efficient future.

Customers applying for Residential New Construction High-Rise incentives are subject to the program terms and conditions identified below. Participants agree that all energy conservation measure incentives will be paid directly to the Lead Vendor for the Mass Save Residential New Construction program, ICF, for the purposes of processing and distributing incentives to program participants. By signing this document, the participant acknowledges and agrees to comply with the terms and conditions below.

Customer Signature	Date
Customer Name (print)	Incentive Recipient Address

## Program Terms and Conditions

### 2020 Eligibility Requirements

- Qualifying projects:
    - Multi-family building of 4 or more stories and 5 or more units.
    - Multi-family buildings of 3 or less stories with a master-metered primary heating system.
  - Energy Model completed by program-supplied modeling software.
    - Energy Model will be completed by a Mass Save representative using project information provided by participants.
  - All projects are required to register prior to the start of construction.
  - The submission of these terms and conditions does not guarantee receipt of incentives. A summary of the anticipated incentive award is provided in the Offer Letter.
  - Incentive payments are directly tied to a project's modeled energy performance. Any changes to the design or specifications of the projects may result in a change in incentive(s).
  - Final incentive amounts are based upon the verification of installed measures as determined at the end of the construction process. The incentives awarded are to assist in the defrayment of verification costs to the participant and help cover some of the incremental costs. The participant may need to contribute to the construction costs of achieving higher energy performance.
  - Participants who receive equipment or energy efficiency measure incentives through the program are not eligible to receive them directly through any other utility or energy efficiency service provider sponsored program.
  - Incentives associated with this Agreement are for buildings built in the service territory of the electric Sponsor. For buildings built in an area serviced by a municipal electric company and heated by natural gas, incentives will be paid on a case-by-case basis and only then by the appropriate gas Sponsors.
  - Incentive offers are based on building information (e.g., square footage, number of units, number of stories, common spaces) submitted at the time of application. Actual incentives paid will be based on the building as built, and any differences will result in adjustments in the incentive award. The program reserves the right to request As Built documentation to verify final incentive payments.
  - SPONSORS, THEIR AGENTS, AND EMPLOYEES DO NOT WARRANT THE PERFORMANCE OF INSTALLED OR SERVICED EQUIPMENT EXPRESSLY OR IMPLICITLY. Sponsors make no warranties or representation of any kind, whether statutory, expressed, or implied, including without limitations, warranties, or merchantability or fitness for a particular purpose regarding equipment, materials, or services provided by a manufacturer or vendor.
  - Participation in the Massachusetts Residential New Construction Program is voluntary on behalf of the Sponsors and the participants. The Sponsors have the right to change or modify the existing program at any time. The Sponsors of the program, their agents, and employees are indemnified against all loss, damage, expense, and liability resulting from injury to or death of persons, and against all injury to property arising out of or in any way connected with the performance of this Agreement.
1. **Incentives**  
Subject to these terms and conditions, the Sponsors will pay incentives to the customer for the installation of energy efficiency measures.
  2. **Definitions**
    - a. "Customer" means the customer maintaining an account for service with the Sponsors, or in the case of a Sponsor that is a municipal aggregator, maintains an account for service with the distribution company serving the territory of such Sponsors, and who satisfies the program eligibility requirements established by the Sponsors.
    - b. "EEMs" are those energy efficiency measures described in the program materials or other custom measures that may be approved by the Sponsors.
    - c. "Facility" means the customer location served by the Sponsors where EEMs are to be installed.
    - d. "Incentives" means those payments made by the Sponsors to customers pursuant to the program and these terms and conditions.
    - e. "Program" means the energy efficiency program offered by the Sponsors to the customers.
    - f. "Sponsors" means Berkshire Gas Company, or Cape Light Compact, or Columbia Gas of Massachusetts, or National Grid, or Liberty Utilities, or Eversource Electric & Gas, or Unitil Electric & Gas, as applicable.
    - g. "Program Materials" means the documents and information provided by the Sponsors specifying the qualifying EEMs, technology requirements, costs, and other program requirements, which include, without limitation, program guidelines, application forms, and approval letters.
  3. **Application Process and Requirement for Sponsors Approval**
    - a. The customer shall submit a completed application in the form specified by the Sponsors. In addition, at the Sponsors' discretion, the customer may be required to provide the Sponsors with 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. The customer will, upon request by the Sponsors, 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 the Sponsors or by applicable law, regulation, or code.
    - b. The Sponsors will review the customer's application and supporting documentation to determine the energy savings and demand reduction potential. The Sponsors reserve the right to reject or modify any calculations, based on the Sponsors' own analysis.
    - c. The Sponsors are not obligated to pay any incentives unless the authorized representative of the Sponsors issues an Award Letter regarding the EEMs proposed by the customer, and any necessary pre- and post-installation verification activity is successfully completed by the Sponsors. The Sponsors' 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. The Sponsors 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 the Sponsors will have no obligation to pay, incentives for any EEMs that have not been approved in writing in advance by the Sponsor, unless the program materials state that such prior approval is not required. Further, the Sponsors are not obligated to pay incentives for projects that were pre-approved but are determined to not comply with Sponsors after installation is complete.
    - e. The Sponsors reserve the right to approve or disapprove of any application or proposed EEMs.
  4. **Pre- and Post-Installation Verification**  
The Sponsors are not obligated to pay any incentives until the Sponsors have 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 the Sponsors determine that any EEMs were not installed in accordance with these terms and conditions, the program materials and the Sponsors' approval, the Sponsors shall have the right to require modifications before having the obligation to make any incentive payments. At its discretion, the Sponsors 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 the Sponsors have received documentation detailing the installation of the EEMs in accordance with these terms and conditions, the program materials, and the Sponsors' approval.

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## 5. Monitoring and Inspection

The Sponsors reserve 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 the Sponsors and cooperate with the Sponsors regarding such activity. By participating in the program, the customer acknowledges and agrees that no activity by the Sponsors includes any kind of safety, code, or other compliance review.

## 6. Site-Specific Custom Measures

The Sponsors will only approve of those site-specific custom EEMs that the Sponsors believe have cost-effective energy savings potential. In any case, the Sponsors reserve the right to approve or disapprove of any such EEMs proposed by the customer.

## 7. Incentive Amounts

- The Sponsors reserve the right to adjust and/or negotiate the incentive amount.
- Once an incentive amount is pre-approved, the Sponsors will pay no more than the cost to the customer of purchasing and installing the EEM, or the preapproved incentive amount, whichever is less.
- The Sponsors reserve the right to reduce or eliminate the incentive amount if (1) the quantity and/or qualifying costs of EEMs actually installed differ from the pre-approved amounts; or (2) the EEMs were not installed in accordance with these terms and conditions, the program materials or the Sponsors' approval; or (3) the EEMs have not been properly maintained, have been altered or disconnected, or are located in a facility that experiences a shutdown or significant reduction of operations. In addition, the customer shall be obligated to refund such incentive amounts paid by the Sponsors where the projected energy savings have not been achieved as a result of the foregoing circumstances.

## 8. Equipment and Installation

The 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. The customer shall provide the Sponsors 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 the Sponsors, and such other documentation and information as the Sponsors may request, including, without limitation, copies of permits and contractor and supplier invoices, orders, and records. The Sponsors reserve the right to determine in their 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 dates specified in the Sponsors' approval letter or twelve (12) months from the date the Sponsors issue pre-approval of the EEM project, the Sponsors may terminate any obligation to make incentive payments.

## 10. Incentive Payment Conditions

Provided that the customer has satisfied its obligations, the Sponsors 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) Sponsors' 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) the Sponsors have verified all product and installation costs and the satisfactory installation of the EEMs, all in accordance with the terms hereof. The 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 the Sponsors.

## 11. Contractor Shared Savings Arrangements

If EEMs are being installed by a contractor under a shared savings arrangement, the Sponsors reserve the right to determine the cost of purchasing and installing the EEMs.

## 12. Maintenance of EEMs

The customer acknowledges and agrees that the 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 and conditions, may be changed by the Sponsors at any time without notice. The Sponsors reserve 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 the Sponsors.

## 14. Third-Party Financing

Pre-approved custom projects are eligible for financing by a Third-Party Lender through your Sponsors. (1) The Lender will qualify the customer. (2) Invoicing of monthly payments will be administered by the Third-Party Lender. (3) The Interest rate on Third-Party loans is set at prime plus 100 basis points with a 6.25% minimum rate. (4) Scheduled interest payments on the loan will be pre-paid by the Sponsors in lieu of a portion of the incentive or rebate.

## 15. Publicity of customer Participation

The customer grants to the Sponsors 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.

## 16. Indemnification and Limitation of the Sponsor's Liability

customer shall indemnify, defend, and hold harmless Sponsors, their affiliates, and their respective contractors, officers, directors, employees, agents, and 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, the Sponsors' 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 the Sponsors and their affiliates and their respective contractors, officers, directors, employees, agents, and 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 the Sponsors and their 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.

## 17. No Warranties or Representations by the Sponsors

- THE SPONSORS DO NOT ENDORSE, GUARANTEE, OR WARRANT ANY CONTRACTOR, MANUFACTURER, OR PRODUCT, AND THE SPONSORS MAKE 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. THE 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 SPONSOR, AND THE SPONSORS MAKE 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 SPONSOR'S OTHER DOCUMENTS.
- Neither the Sponsors nor any of their employees or contractors are 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 Sponsors do 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.
- The 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 the Sponsors) 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 the customer's purposes; and determining if work was properly performed.
- The customer agrees and acknowledges that Sponsors are not a manufacturer of, or regularly engaged in the sale or distribution of, or an expert with regard to, any equipment or work.
- The provisions of this Section 16 shall survive the termination, cancellation, or completion of the customer's participation in the program.

## 18. Equipment, Contractor Selection, and Contracting

The 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 contractors are properly qualified, licensed, and insured. Notwithstanding the foregoing, the customer acknowledges that the Sponsors reserve the right to deny a vendor or contractor to participate in this program or provide equipment or services. The Sponsor also has the right to exclude certain equipment from the program.

## 19. 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, regulations, and codes. The customer agrees not to re-install any removed equipment in the Commonwealth of Massachusetts or the service territory of any affiliate of the Sponsors, and assumes all risk and liability associated with the reuse and disposal thereof.

## 20. Energy Benefits

Other than the energy cost savings realized by the customer, the Sponsors are 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, regulation, or program; and customer waives, and agrees not to seek, any right to the same.

## 21. 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 Sponsors are not responsible for the payment of any such taxes.

## 22. 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.

## 23. Miscellaneous

- Paragraph headings are for the convenience of the parties only and are not to be construed as part of these terms and conditions.
- 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.
- These terms and conditions shall be interpreted and enforced according to the laws of the Commonwealth of Massachusetts.
- In the event of any conflict or inconsistency between these terms and conditions and any program materials, these terms and conditions shall be controlling.
- 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 Sponsors.
- 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.

Ready to get started? We are here to help:

1-866-527-SAVE (7283) • multifhr@icf.com  
MassSave.com/Multi-Family-New-Construction

