

COMBINED HEAT & POWER (CHP) ADDITIONAL TERMS AND CONDITIONS

The Potomac Edison Company – Maryland

- 1) **Approval and Verification:** Pre-approval is required for all Combined Heat & Power (“CHP”) projects. No project may be contracted for, purchased or installed prior to the date of The Potomac Edison Company’s (“Potomac Edison”) pre-approval. Potomac Edison reserves the right to have reasonable access to the facility to inspect or monitor the CHP project installed under this initiative, prior to issuing incentives. In particular, Potomac Edison is not obligated to pre-approve any application for an incentive that may result in Potomac Edison exceeding its program budget. Potomac Edison reserves the right to exclude any proposed energy saving measures based on engineering analysis.
- 2) **Compliance:** All CHP projects must comply with all federal, state and local laws, regulations and codes. All equipment must be new. Used or rebuilt equipment is not eligible for incentives. Existing equipment must be removed and disposed of in a proper and legal manner, and have been purchased and operating prior to submitting the application form.
- 3) **Payment:** Potomac Edison will authorize payment upon the application’s review and approval. The incentive checks will be mailed within six (6) weeks after each of the specific CHP project phases are verified and completed. Incomplete applications will be returned. The Customer may assign the incentive payment to a qualified contractor (if allowed). The benefits/payments conferred upon the Customer or their designated contractor through participation in this CHP program may be taxable by federal, state or local governments, and the Customer or designated contractor is responsible for declaring and paying all such taxes and Customer shall indemnify Potomac Edison for any tax related claims.
- 4) **Inspection:** Potomac Edison staff or its representatives may conduct inspections of the facility to survey the installed project and equipment.
- 5) **Verification:** Any Customer receiving an incentive check may be contacted by an evaluator to verify service/equipment installation or be asked to complete a written, oral or electronic customer survey.
- 6) **Incentive Repayment:** Any CHP project that exhibits significant delays in achieving project milestones as stated in the Project Requirements Document (PRD) may be disqualified at Potomac Edison’s sole discretion. If the CHP project is disqualified, within thirty (30) days of receiving notice of such disqualification the Customer shall return to Potomac Edison all previously paid incentives and forfeit any incentive claims for the CHP project. CHP projects that are commissioned but do not achieve an annual minimal efficiency of at least 65% may be deemed ineligible to receive performance payments.

- 7) **Evaluation Follow-up Visits:** The Customer agrees, for a period of three (3) years after the final incentive payment, to allow Potomac Edison or its assigned contractor to conduct on-site inspections to verify that the qualified measures are 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 to which the Customer hereby agrees.
- 8) **Changes to the Program:** Potomac Edison may change the CHP program and the CHP Terms & Conditions at any time without notice. Pre-approved applications, however, will be processed to completion under the CHP Terms & Conditions in effect at the time of the Potomac Edison pre-approval.
- 9) **No Warranties:** Potomac Edison, and its employees, contractors, and consultants do not endorse, guarantee or warrant any particular manufacturer or product, and Potomac Edison, its employees, contractors, and consultants do not provide any warranties, expressed or implied, for any products or services. The Customer acknowledges that neither Potomac Edison, nor any of its employees, contractors, or consultants are responsible for assuring the design, engineering and construction of the facility, or that the installation of the energy-saving measures is proper or complies with any particular laws (including patent laws), codes, or industry standards. POTOMAC EDISON DOES NOT MAKE ANY REPRESENTATIONS OF ANY KIND REGARDING THE RESULTS TO BE ACHIEVED BY THE ENERGY-SAVING MEASURES OR THE ADEQUACY OR SAFETY OF SUCH MEASURES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 10) **Limitation of Liability:** Potomac Edison's sole liability is limited to paying the incentives specified herein following completion of required conditions. Neither Potomac Edison nor any of its affiliates shall be liable to the Customer or any other party for any indirect, special, punitive, consequential, or incidental damages, regardless of the theory of recovery, caused by or arising from any activities associated with this CHP program.
- 11) **Obligations between the Parties:** Customer acknowledges that any contractor selected by the Customer is not an agent, contractor or subcontractor of Potomac Edison. Potomac Edison shall have no obligation to maintain, remove, or perform any work whatsoever on the energy-savings measures installed. Potomac Edison shall have no liability for contractor's failure to perform, for failure of the energy-saving measures to function, for any damage to the Customer's premises caused by the contractor, or for any and all damages to property or injuries to persons (including death) caused by the energy-saving measures. Customer shall indemnify Potomac Edison for all claims related to damage to property, or injuries to persons (including death).
- 12) **Energy Benefits:** Potomac Edison is entitled to 100% of the energy benefits associated with the energy-saving measures, excluding the value of energy cost savings realized by the Customer, including all rights to all associated PJM Energy, Capacity and Reserves Products. The Customer agrees to provide Potomac Edison with such further documentation as Potomac Edison may request to confirm its ownership of such benefits and products.

- 13) **Assignment:** Customer may not assign any rights or claims, or delegate any duties under the CHP Terms & Conditions, in whole or in part, without Potomac Edison's prior written consent. In the event of any assignment or delegation permitted hereunder, Customer shall continue to be liable for the performance of its obligations hereunder. The CHP Terms & Conditions are binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.
- 14) **Non-Wavier:** The delay or failure of either party to assert or enforce the strict performance of any of the CHP Terms & Conditions or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such CHP Terms & Conditions or rights at any later time or on any future occasion.
- 15) **Severability:** If any portion of the CHP Terms & Conditions is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of the CHP Terms & Conditions, and the parties further agree to substitute for the invalid provision, a valid provision that most closely approximates the economic effect and intent of the invalid provision.
- 16) **Cumulative Rights:** Potomac Edison's rights and remedies set forth in the CHP Terms & Conditions are cumulative and not exclusive, are in addition to any other rights and remedies provided at law, in equity, or under the CHP program, and may be pursued separately or concurrently as Potomac Edison determines.
- 17) **Governing Law, Jurisdiction and Venue:** All matters of dispute between the parties, whether regarding, arising from or relating to the CHP Terms & Conditions or arising from alleged extra-contractual facts prior to, during, or subsequent to execution of the CHP Terms & Conditions, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of contract shall be governed, construed, and enforced in accordance with the laws of the State of Maryland for both substantive and procedural matters (without giving effect to conflict of laws principles) regardless of the theory upon which such matter is asserted. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods. Any legal suit, action, or proceeding regarding, arising from or relating to the Agreement, may be (and, if against Potomac Edison, must exclusively be) instituted in a State or Federal Court in Washington County, Maryland. Customer waives any objection it may have now or hereafter regarding the jurisdiction or venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

18) **Interpretation:** The following principles of interpretation shall apply to the CHP Terms & Conditions: (1) paragraph headings and captions are inserted for convenience only and shall not constitute a part of the CHP Terms & Conditions and shall not be considered in construing intent, meaning, content or construction; (2) neither Potomac Edison nor Customer shall be considered to be the party responsible for drafting any particular provision of the CHP Terms & Conditions; (3) the words “hereof,” “herein,” “hereunder,” and words of similar import shall refer to the CHP Terms & Conditions as a whole and not to any particular provision hereof; (4) the word “including” means “including, but not limited to” and shall be interpreted as broadly as possible; (5) words in the singular include the plural and vice versa; (6) all references to “days” shall be calendar days (and not merely business days, unless the CHP Terms & Conditions so state); (7) any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the prohibited or unenforceable provision shall be reformed or modified to reflect the parties’ intent to the maximum extent permitted by applicable legal requirements; and (8) if any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the CHP program, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise.

19) **Execution and Delivery:** Delivery of a copy of the CHP Terms & Conditions by facsimile transmission, by electronic mail in “portable document format” (“pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall have the same effect as physical delivery of the paper document bearing the original signature.

CUSTOMER ACKNOWLEDGEMENT:

By signing below, I hereby certify that I have read and agree to these CHP Terms & Conditions as an attachment to the Project Requirements Document (PRD) for this CHP project.

Authorized Representative (*please print*): _____

Title: _____

Signature: _____

Date: _____