

# Terms and Conditions & Customer Acknowledgement

Custom Program: Comprehensive Design Support



## TERMS AND CONDITIONS

1. **PROGRAM OFFER:** This application covers Delmarva Power & Light Company ("Delmarva Power") Design Support Program requirements only. This application does not cover products purchased or installed for the project, which require specific program equipment applications. Projects must be pre-approved in accordance with Section 3 and must be completed and all post-completion documentation specified in Part II – Customer Acknowledgment of this application ("post-completion documentation") must be submitted within twelve (12) months of the Pre-Approval Date (as defined in Section 3). Delmarva Power 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 Delmarva Power 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 Delmarva Power commercial, industrial, governmental, and institutional electric customers in the Delmarva Power Maryland service territory for Comprehensive Design Support, subject to these Terms and Conditions and the requirements included in the Comprehensive Design Support Technical Sheet.
3. **PROJECT APPROVAL:** Pre-approval from Delmarva Power is required for all projects (the date that Delmarva Power provides such pre-approval is the "Pre-Approval Date"). Delmarva Power reserves the right to reject or modify any calculations, based on Delmarva Power's own analysis. Subject to these Terms and Conditions, eligible customers may qualify for incentives from Delmarva Power for the installation of those Energy Efficiency Measures ("EEMs") described within the Design Support request that are approved by Delmarva Power.
4. **REVIEW OF SPECIFICATIONS, SUBMITTALS, AND DRAWINGS:** The customer must provide Delmarva Power with a copy of the specifications for the construction of the facility that will be provided to its construction contractors. Such specifications must include the EEMs. Delmarva Power may refuse to pay incentives if the specifications do not adequately provide for installation of the EEMs consistent with good engineering and energy-efficient design practices. The customer will, upon request by Delmarva Power, provide a copy of the as-built drawing and equipment submittals for the facility. Delmarva Power may refuse to pay incentives if the final submittals and drawings do not adequately reflect the installation of the EEMs consistent with the original design intent as identified on the application.
5. **DESIGN COSTS:** The customer must provide copies of incremental costs representing additional design work necessary to support incorporation of EEMs into Design Documents and Specifications. Invoices must indicate a verifiable breakout of work effort for approved EEMs.
6. **INCENTIVE PAYMENT:** Incentive payments will be subject to the following limitations: a) Each Delmarva Power electric account is limited to \$1,000,000 in incentives from Delmarva Power per program year. b) Delmarva Power reserves the right to deny any incentive application that may result in Delmarva Power 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 Delmarva Power 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, Delmarva Power 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:** Delmarva Power expects to pay all incentives within 4-6 weeks after final review and approval upon completion of Design Support Phases I and II, within 4-6 weeks after approval of notification of construction initiation for Design Support Phase III, and within 4-6 weeks after approval of Operation & Performance ("O&P") reporting for Enhanced Commissioning. Review of the design and installation of the EEMs is limited solely to determining whether Program requirements have been met and will not constitute an assumption by Delmarva Power of any liability with respect to the EEMs. Project completion requires: (1) submission to Delmarva Power of all post-completion documentation and (2) Delmarva Power verification and acceptance of (1), all in accordance with the Design Support requirements. Delmarva Power reserves the right to apply incentives to any of the customer's unpaid or overdue accounts, whether in Delaware 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. Delmarva Power reserves the right to request and receive permits as a condition of payment of incentive.
11. **PUBLICITY OF CUSTOMER PARTICIPATION:** Delmarva Power reserves the right to publicize the 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, Delmarva Power will obtain the customer permission to make such information public.
12. **DELMARVA POWER / PROGRAM LOGO:** Customers and Service Providers may not use the Delmarva Power logo or Program name in any marketing, advertising, or promotional materials without prior written consent from Delmarva Power.
13. **CHANGES TO / CANCELLATION OF THE PROGRAM:** Delmarva Power 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 Delmarva Power. Notwithstanding the foregoing, Delmarva Power reserves the right to delay or deny payments to pre-approved applications if such payment may result in exceeding the Program budget. Submission of a completed application does not entitle the customer to Program participation or guarantee payment.
14. **SERVICE PROVIDER SELECTION:** Delmarva Power acknowledges that the customer may select any Delmarva Power 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 Delmarva Power approved Service Providers. If a customer has a particular contractor, distributor, or other market provider that they plan 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 Delmarva Power has the right, in its sole discretion, to prohibit specific Service Providers from Program participation. Delmarva Power 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 Delmarva Power customer's participation in the Program. Expired licenses and/or permits will not be accepted. Failure to provide Delmarva Power with this request may result in cancellation of the application and denial of incentives.
15. **LIMITATION OF LIABILITY AND INDEMNIFICATION:** Delmarva Power, its officers, directors, employees, affiliates, contractors and agents (the "Delmarva Power 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 Delmarva Power Program, the customer agrees to waive any and all claims, whether arising in contract or tort and to fully release the Delmarva Power Parties from any and all damages, of any kind. The customer will protect, indemnify, and hold harmless the Delmarva Power 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 Delmarva Power Parties arising out of or relating to the this Application or the Program, whether arising in contract or tort.

## TERMS AND CONDITIONS (CONTINUED)

16. NO WARRANTIES: NONE OF THE DELMARVA POWER PARTIES ENDORSE, GUARANTEE, OR WARRANT ANY PARTICULAR MANUFACTURER, PRODUCT, CONTRACTOR, SERVICE PROVIDER OR VENDOR, NOR DO THE DELMARVA POWER PARTIES PROVIDE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PRODUCT OR SERVICE. THE DELMARVA POWER PARTIES ARE NOT LIABLE OR RESPONSIBLE FOR ANY ACT OR OMISSION OF ANY CONTRACTOR HIRED BY THE CUSTOMER (IF ANY) WHETHER OR NOT SAID CONTRACTOR IS A PARTICIPATING DELMARVA POWER 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 DELMARVA POWER 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 DELMARVA POWER 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.

17. MISCELLANEOUS: a) The agreement between the customer and Delmarva Power 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 Delmarva Power under the Delmarva Power program are Delmarva Power staff and authorized agents of Delmarva Power. 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 Delmarva Power ("Delmarva Power'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 Delmarva Power (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 non-binding 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), Delmarva Power 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) DELMARVA POWER AND 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 Delmarva Power 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 3<sup>rd</sup> party will be receiving the incentive directly, the customer must authorize payment by signing below.

Payment to:  Service Provider  Other 3<sup>rd</sup> Party

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Delmarva Power Energy Savings for Business Program

Contact: 1-866-353-5799 | [delmarvabusiness@icf.com](mailto:delmarvabusiness@icf.com)