

APPENDIX A – Terms and Conditions

1. DEFINITIONS. The following capitalized terms shall have the meanings set forth below:

- (a) “Agreement” means, collectively, the Rebate Reservation Form, these Terms and Conditions and the Program’s policies and procedures contained in the Multifamily Energy Efficiency Program Participant Handbook (“Participant Handbook”) at PNM.com/multifamily.
- (b) “Building” means a multifamily residence located in PNM service territory.
- (c) “Participating Contractor” means a licensed contractor enrolled as a trade ally in the Program, with qualifications identified in the Participant Handbook.
- (d) “Customer” means the Owner or Property Manager of a Building who has sufficient authority to grant permission for entry to the Building and for the installation of the Upgrades.
- (e) “Field Quality Control Inspector” or “Field QC” means an individual instructed by Implementer to perform an on-site inspection of the completed energy efficiency upgrades by Participating Contractor, verifying the proper installation of the Upgrade(s), accuracy of the test-out data and CAS results, and remediation of CAS issues or other corrective actions identified.
- (f) “Implementer” means a business entity engaged by and authorized by PNM to administer, implement and market the Program, subject to certain terms and conditions.
- (g) “Post Upgrade Incentive” means the monetary incentive paid by or on behalf of PNM to Customer pursuant to the Program’s rules after the energy efficiency upgrades have been completed and verified by a Field QC.
- (h) “Program” means the PNM Multifamily Energy Efficiency Program established in PNM's 2014 Energy Efficiency and Load Management Program Plan and approved by the New Mexico Public Regulation Commission, as such may be amended or updated from time to time.
- (i) “Project” means the Upgrade(s) to be installed as set forth in the Rebate Reservation Form.
- (j) “Term” shall have the meaning set forth below in Section 10.
- (k) “Upgrade” shall have the meaning set forth below in Section 3.

2. ELIGIBILITY: The Program offers the Post Upgrade monetary incentives to Customers and Participating Contractors. In order to receive these incentives a Customer must meet the following eligibility requirements and remain compliant throughout the Term:

- (a) Building(s) receives electric service from PNM;
- (b) the Building has at least five (5) dwelling units, or belongs to a property of multiple 4-unit buildings;
- (c) Customer employs a Participating Contractor or other appropriately licensed professional to install the Upgrades;
- (d) Customer will provide PNM and/or its Implementer all Upgrade information requested;
- (e) Customer will provide Participating Contractor and Field QC reasonable access to the Building and dwelling units within the Building;
- (f) The Upgrades will be completed by December 31, 2019.

3. QUALIFYING PROJECTS AND UPGRADES: A qualifying Project includes electric energy efficiency upgrades identified in the Participant Handbook: (collectively, the “Upgrades”). A Project may not qualify under this Program if any electric energy efficiency upgrades, including energy efficiency equipment purchased or services contracted for, are installed prior to January 1, 2019. A project may not receive rebates through the Multifamily Energy Efficiency Program for products or services that have been subsidized through other upstream, midstream, direct install, or rebate programs implemented on behalf of PNM.

4. INCENTIVE AMOUNTS: Upgrade Incentives for Qualifying Projects are in the Program brochures and documentation at: www.pnm.com/multifamily. These incentives will be paid after successful completion and quality control. The Upgrade Incentive may only be valid for one program cycle and cannot exceed the amount of the installation cost.

5. IMPLEMENTATION OF WORK AND PAYMENT OF UPGRADE INCENTIVES: Customer agrees to evaluate and select a Contractor they deem best to install the Upgrades. Customer is responsible to pay applicable co-payments to the Contractor for each Upgrade installed. When PNM or Implementer confirms the installation of all Upgrades are satisfactorily

completed, and after any requests from the Field QC to conduct a Post-upgrade inspection if applicable, Implementer will make arrangements for payment of the total amount of the Post Upgrade Incentives.

6. CUSTOMER INFORMATION: Customer agrees to provide follow-up information to PNM or its Implementer necessary and reasonable to process Customer's Rebate Reservation or Request Forms. Such information may include without limitation, electric consumption data and electric energy savings for the Building.

7. TAX LIABILITY and CREDITS: Customer acknowledges that neither PNM nor its Implementer is responsible or liable for any taxes which may be imposed as a result of Upgrades installed.

8. ELIGIBILITY AND REBATE DISPUTES: If any dispute, excluding disputes among Participating Contractor and Customer, arises under the Agreement concerning the eligibility requirements of a Building, an Upgrade, the Project, or the amount of the Post Upgrade Incentive, that is not settled promptly, the parties shall first seek to resolve any such dispute between them by timely negotiating in good faith in face-to-face negotiations. These face-to-face negotiations shall be conducted by the respective designated individuals of Customer, Implementer and PNM, to seek resolution of the dispute. If the parties are unable to resolve the dispute between them within thirty (30) business days following their commencement (or within such other period as the parties may otherwise mutually agree upon), then either party may pursue available legal and equitable remedies.

9. PROGRAM CHANGES: PNM reserves the right, in its sole discretion, to change, modify, or terminate this Program, or the Program rules and terms, (including without limitation, the Program requirements, scope or Term) upon notice at any time without penalty or any liability to Customer. Notwithstanding the foregoing, PNM and Implementer will honor all written commitments made to a Customer prior to the effective date of any change, modification or termination, provided the Upgrades are completely installed within the time period specified in the Reservation Letter.

10. PROGRAM EXPIRATION: This Program, and the Agreement, will expire upon the earlier of (a) December 31, 2019, (b) the date when the funds made available for the Program are depleted, or (c) when the Program is terminated (the "Term"). All Post Upgrade Incentives approved by or on behalf of PNM prior to this date will be honored by PNM.

11. DISCLAIMER: PNM and its Implementer make no representations or warranties, expressed or implied, and do not guarantee that implementation of the Upgrades or use of the equipment purchased or installed pursuant to this Program will result in energy cost savings. Accordingly, PNM recommends that Customer consider engaging qualified engineers or other consultants to evaluate the risks and benefits this Project may have relating to energy consumption, cost savings, and/or operation of the Building.

12. CUSTOMER'S CONTRACTOR: Customer has the discretion to choose any Contractors that are currently participating as a trade ally in the Program and in good standing, or other appropriately licensed Contractor.

13. INSTALLATION REQUIREMENTS: All Upgrades must be in full compliance with the requirements of all applicable laws, ordinances, rules, and regulations of federal, state, and local authorities or any other authorities having governmental and regulatory jurisdiction. In the removal of old equipment from the Building, Customer or its Participating Contractor must remove and dispose of any and all equipment or materials that are replaced or removed in accordance with all applicable laws, rules and regulations. In performing the work, Customer shall obtain or cause its Contractors to obtain all legally-required building permits.

15. CUSTOMER FEEDBACK: This Program is intended to inform best practices for designing and implementing a future multifamily energy efficiency programs, feedback from Customer is necessary. Reasonable efforts will be made by PNM and/or its Implementer to gather Customer input and feedback in a manner convenient to Customer, and Customer agrees to provide reasonably detailed feedback to Program Implementer via interview and/or surveys.

17. INDEMNIFICATION: Customer shall indemnify, defend and hold PNM, its affiliates and their respective directors, officers, employees, agents, successors and assigns (collectively, the "PNM Indemnities") from and against any and all claims, damages, costs, expenses, (including attorneys' fees and court costs) and liabilities (including settlements) brought or asserted by any third party against the PNM Indemnities resulting from, arising out of or related to any claims for damages, release of information, energy usage data arising out of this Project and Agreement.

18. MISCELLANEOUS:

- (a) GENERAL. This Agreement constitutes the entire agreement between the parties on this subject, and it supersedes any other prior oral or written agreements or understandings on this subject. Except to the extent specifically provided otherwise herein, amendments to this Agreement must be in writing and signed by a duly authorized officer

of each party. If any part of this Agreement is invalid, illegal or unenforceable for any reason, the remainder shall remain in full force and effect.

- (b) **ASSIGNMENT.** Customer may not assign, delegate, or otherwise transfer this Agreement, including the rights and obligations in whole or in part, to any third party, without PNM's prior written consent. This Agreement is binding upon the successors and permitted assigns of the Parties.
- (c) **INDEPENDENT CONTRACTORS.** Customer, PNM, and Implementer are independent contractors and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, or fiduciary duty between Customer, PNM, and/or Implementer. Each party shall bear all of its own costs and expenses in performing its obligations under this Agreement.
- (d) **GOVERNING LAW.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico, without regard to the conflicts of laws principles.