

# New Jersey Direct Install Program Participating Contractor Agreement

## ELIGIBILITY REQUIREMENTS AND OTHER TERMS AND CONDITIONS:

- 1. ELIGIBILITY:** JCP&L Direct Install Program is a comprehensive commercial energy efficiency program that offers financial incentives and financing for qualifying energy efficiency measures in commercial buildings to customers who are property owners, tenants or managers (customers) of JCP&L in New Jersey. Customers must receive JCP&L electric or natural gas delivery service and be in good standing. Incentives are available to customers for the purchase and installation of qualifying energy-efficiency measures at the location where the qualifying project is to be installed. JCP&L will not offer financial incentives for the same eligible measure to those customers who have received financial incentives or rebates from other JCP&L Energy programs.
- 2. QUALIFYING PROJECTS AND MEASURES:** Qualifying projects include electric or natural gas energy-efficiency measures identified as eligible incentives in the Direct Install Program. Qualifying projects do not include any electric or natural gas energy-efficiency measures or energy-efficiency equipment or services purchased, contracted for, or installed prior to the program start date. Incentives are not available for any measures served by deliverable fuels and any electric equipment served by municipal electric utilities.
- 3. INCENTIVE AMOUNTS:** The amounts of the incentives for which qualifying projects are eligible are set forth in the program brochures. JCP&L decision on these issues will be final. JCP&L reserves the right to change the measures and incentives at any time throughout the program cycle. Incentive levels will be affected by the level of comprehensiveness of the project
- 4. CUSTOMER WORK AUTHORIZATION AND PROJECT WORK PLAN:** WILLDAN, or its Participating Contractor (Contractor) partners, will meet with the customer to discuss individual building objectives, provide a comprehensive energy assessment by an approved contractor or Implementer, of the building to identify inefficient, outdated energy consuming equipment. Following the assessment, the contractor develops a proposal for retrofitting or replacing such equipment. This proposal will be screened by the Utility to determine the incentive level for the project and the contractor will submit and review the proposal with the customer. The proposal must clearly state the installed cost and incentive for each energy efficiency measure. The contractor must, discuss process and create a work project and schedule. In the event the contractor is not approved to perform the approved installation work, WILLDAN/UTILITY may select and provide one or more approved installation subcontractors to complete the measure-installation work, or the customer may select one or more contractors from an approved network of Contractors. To be included on the approved list, a vendor shall submit contractor-qualification forms, provide documentation of required insurance, and submit the Contractor Application. WILLDAN will offer network membership to applicants at its discretion. When offered membership, vendor must sign this Contractor Agreement, agree to follow program guidelines and protocols, including program reporting and verification requirements, participate in a required Program Orientation, and otherwise remain in good standing with JCP&L.
- 5. BUILDING ENERGY ASSESSMENT:** In order to qualify for incentives, implementer and/or trade ally partners must perform a comprehensive building assessment. The assessment report must include a complete inventory of all qualified energy consuming equipment including but not limited to lighting, HVAC equipment, refrigeration equipment & building controls, etc. When applicable, equipment specific data must include model & serial numbers, manufacture date and overall condition. Contractor /Trade Ally is expected to propose comprehensive solutions.
- 6. IMPLEMENTATION OF WORK, PAYMENT OF INCENTIVES, INSPECTION REQUIREMENTS:** The customer must pay its share of the cost for each measure to be installed pursuant to the Scope of Work at a time not later than the completion of the project. When WILLDAN/JCP&L confirms that installation of the project is satisfactorily completed, WILLDAN/UTILITY will arrange for payment of the project incentive to the customer, either directly or by JCP&L, or, if authorized to do so by the customer, directly to the Contractor. WILLDAN/JCP&L quality-assurance and/or quality-control inspectors and/or JCP&L, in their sole discretion, may schedule and conduct a post-installation inspection to ensure satisfactory measure installation. Incentive checks will be sent approximately four weeks after WILLDAN confirms satisfactory installation. With advance notice to the customer, following completion of the project and in order to provide JCP&L with an opportunity to review the operation of the energy-efficiency measures for program evaluation purposes, the customer agrees to cooperate with any effort by JCP&L or its contractors and subcontractors, to make or to have made follow-up visits to customer facilities, and the customer shall provide building energy system data, supporting documentation, and otherwise cooperate fully in support of this effort.
- 7. INFORMATION AND DATA:** The Contractor will keep customer information including name, account numbers, electric & natural gas consumption data and electric & natural gas energy savings to its third-party evaluation contractor for program evaluation purposes, confidential. Participants in the program must comply with the terms and conditions regarding data security set by JCP&L within Attachment A.
- 8. TAX LIABILITY and CREDITS:** JCP&L is not responsible for any taxes which may be imposed on the customer as a result of measures installed under this program. Each customer must provide a valid Federal Tax I.D. number.
- 9. DISPUTES:** JCP&L will have sole discretion to decide on the final resolution of any issues including but not limited to eligibility or incentives.
- 10. PROGRAM CHANGES:** JCP&L reserves the right to change, modify, or terminate this program at any time without any liability except as expressly stated herein. JCP&L will honor all written commitments made in Scope of Work provided to customers prior to the date of any change, modification or termination of this program, provided that project installations are fully completed within the time specified in the Scope of Work.

- 11. PROGRAM EXPIRATION:** This program will expire June 30, 2024, when funds are depleted, or when the program is terminated, whichever comes first.
- 12. DISCLAIMER:** JCP&L and WILLDAN its Third Party Implementation Contractor, make no representations or warranties, expressed or implied, and do not guarantee that implementation of energy-efficiency measures or use of the equipment purchased or installed pursuant to this program will result in energy-cost savings. Accordingly, JCP&L recommends that all customers consider engaging qualified engineers or other qualified consultants to evaluate the risks and benefits, if any, of such implementation and use on energy consumption, cost savings, or operation of customers' facilities.
- 13. INSTALLATION REQUIREMENTS:** All work must be in full compliance with the requirements of applicable laws, rules, and regulations of authorities having governmental and regulatory jurisdiction. Work must be performed by Contractors approved by WILLDAN and JCP&L for participation in the Direct Install Program. Additionally, work must be completed within 180 days of the commitment execution date on the Customer Authorization document. In the removal of old equipment, the applicant confirms that, as a requirement of the program, the owner or any Contractor carrying out installation of measures under this program shall remove and dispose of any and all equipment or materials that are replaced or removed in accordance with all applicable laws, rules, and regulations. If these requirements are not met, then JCP&L may cancel, withdraw, and revoke the incentive funds from the project.
- 14. INDEMNIFICATION:** To the fullest extent permitted by law or regulation, Contractor shall defend, indemnify and hold harmless each of the [Utilities] and any subsidiaries or affiliates thereof, their respective directors, officers, employees, agents, representatives and program implementers ("Indemnitees") from and against any and all liabilities, losses, claims, damages, fines, penalties, costs, expenses (including reasonable attorney's fees), demands and causes of actions of every kind or character ("Losses") arising, or alleged to have arisen, out of any claims (just or unjust) relating to: personal injury, including death to any employee or other person; damage or injury to property, including loss of use; or a breach or incident to the performance of this Contract and/or the acts or omissions of the Contractor, its employees and/or subcontractors. Notwithstanding the foregoing, Contractor's obligations under this section shall not extend to Losses that are the direct result of a fully adjudicated finding of negligence or intentional misconduct of an Indemnitee.
- 15. PREVAILING WAGE AND PUBLIC WORKS:** If the work to be performed qualifies as a "public work" under the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. (the "Act"), Contractor agrees to adhere to and comply with the Act and shall require the same of its subcontractors. These obligations include but are not limited to: 1) workers employed in the performance of the Contract shall be paid not less than the prevailing wages applicable, and 2) Contractor will employ on the site only individuals who have successfully completed all OSHA-certified safety training, if any, required as a prerequisite for the particular work to be performed on the site. If the work falls under the jurisdiction of the New Jersey Division of Property Management and Construction, Contractor agrees to comply with and to require its subcontractors to comply with all requirements of that agency and any related law.
- 16. LIMITATIONS OF LIABILITIES:** THE UTILITIES' TOTAL LIABILITY TO CONTRACTOR FOR ALL CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, FOR ANY LOSSES (AS DEFINED ABOVE) ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OR BREACH OF THIS CONTRACT SHALL, UNDER NO CIRCUMSTANCES, EXCEED THE CONTRACT PRICE, AS MAY BE AMENDED BY AGREED-UPON PRICE FOR EXTRA WORK AUTHORIZED BY WRITTEN CHANGE ORDER. THE UTILITIES, THEIR RESPECTIVE AFFILIATES AND REPRESENTATIVES, OFFICERS, DIRECTORS, EMPLOYEES AND SUBCONTRACTORS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES (AS DEFINED ABOVE) INCLUDING, BUT NOT LIMITED TO, DAMAGES RELATED TO SAFETY, HEALTH OR WELL-BEING, LOST OR REDUCED PROFITS, REVENUES, EFFICIENCY, PRODUCTIVITY, BONDING CAPACITY, OR BUSINESS OPPORTUNITIES, OR INCREASED OR EXTENDED OVERHEAD, OPERATING, MAINTENANCE, OR DEPRECIATION COSTS AND EXPENSES.

TO THE EXTENT THAT THIS CONTRACT INCLUDES LIQUIDATED DAMAGES, THE LIMITATION OF LIABILITY SHALL NOT APPLY TO THE LIQUIDATED DAMAGES SPECIFIED THEREIN AND THE PAYMENT OF LIQUIDATED DAMAGES SHALL NOT EXCUSE CONTRACTOR'S FAILURE TO PERFORM OR BREACH OF THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT: (i) THE UTILITIES WILL SUFFER SIGNIFICANT DAMAGES AND SUBSTANTIAL FINANCIAL LOSS IF THE SCHEDULE GUARANTEES OR PERFORMANCE GUARANTEES, TO THE EXTENT APPLICABLE, ARE NOT MET AND SUCH DAMAGES AND FINANCIAL LOSSES WOULD BE VERY DIFFICULT TO CALCULATE; AND (ii) THE LIQUIDATED DAMAGES SPECIFIED IN THE CONTRACT ARE FAIR AND REASONABLE, IN LIEU OF ACTUAL DAMAGES, ARE NOT PENALTIES, AND REFLECT THE PARTIES' GOOD FAITH ASSESSMENT AND ESTIMATE OF THE DAMAGES AND FINANCIAL LOSSES REFERRED TO ABOVE. THE LIQUIDATED DAMAGES SPECIFIED HEREIN ARE THE UTILITIES' EXCLUSIVE FINANCIAL REMEDY FOR FAILURE TO ACHIEVE SCHEDULE OR PERFORMANCE GUARANTEES, BUT DO NOT PREVENT THE UTILITIES FROM EXERCISING ITS OTHER RIGHTS AND REMEDIES UNDER THE CONTRACT INCLUDING THE UTILITIES' RIGHTS IN THE EVENT OF TERMINATION.

- 17. WARRANTIES:** Contractor warrants that all work provided by Contractor or its subcontractors shall: (i) be of high quality; (ii) be free from any defects; (iii) be suitable for the purposes for which it was intended; (iv) be properly installed; (v) result in dependable service and performance as specified in, or that may reasonably be inferred from, the Contract documents; (vi) comply with established industry codes and standards; (vii) comply with sound industry and work practices; (viii) comply with all laws; (ix) not violate any intellectual property right or other proprietary interest; and (x) otherwise fully conform in all respects to the Contract documents.

Unless otherwise specified in the Contract, Contractor also warrants that all material provided hereunder, including all components incorporated into the work, shall be new and free from any liens, encumbrances, security interests, and defects in title.

Contractor warrants that any system(s) provided as part of the work (including but not limited to heating, wiring, piping, cooling, plumbing, electrical, control, lighting, alarm, or computer systems) shall operate properly and dependably and be compatible with other existing or connecting systems. Contractor warrants that any material provided as part of such system(s) shall be compatible with the system(s) and its components.

During the progress of the work, Contractor shall, at its sole cost and expense, promptly repair, replace, or re-perform any work, including material, in whole or in part, that is rejected by the Utilities as failing to conform to the Contract. Contractor shall also bear all expenses required to fix any work of the Utilities or other contractors that is impaired, destroyed, or damaged by such non-conforming work or the repair, replacement, or re-performance of such non-conforming work.

For one year from the date work has been accepted by the Utilities, or the date work has been placed into commercial use, whichever is later (the "Warranty Period"), Contractor warrants that it will promptly repair, correct, replace, and re-perform any said work that fails to conform to the Contract at no additional cost to the Utilities. All such warranty work shall be performed on a schedule acceptable to the Utilities and shall be warranted for one (1) additional full year from the date of repair, correction, replacement, or reperformance of such work, which one (1) additional year shall be considered the Warranty Period. The Utilities' acceptance of said work or placement of such work into commercial use, or final payment therefor, shall not relieve Contractor of its responsibility to provide conforming work.

Written communication to Contractor specifying defective or otherwise nonconforming work that appears either during the progress of the work or during the Warranty Period after acceptance of the completed work for use or operation shall be deemed sufficient notice to Contractor to promptly remedy the defect or nonconformity as required by this Contract.

If repair, correction, replacement, or reperformance of defective or otherwise nonconforming work by Contractor would, in the Utilities' opinion, be impracticable or disadvantageous to the Utilities, the Utilities shall be entitled to a full refund of the price paid by the Utilities for such defective or nonconforming work.

The liability of Contractor shall extend to all of Utilities' damages caused by the breach of any of the foregoing warranties and shall include, but not be limited to, the cost of removal and replacement of nonconforming material, shipping of material, correction of work, Utilities' labor expenses resulting from the breach of the warranty, and the cost of removal and reinstallation of other material or work made necessary thereby.

Contractor shall identify in writing all third-party or original equipment manufacturer warranties that Contractor receives in connection with the work and will pass through to the customer the benefits of all such warranties (the "Pass-Through Warranties"); provided, however, that nothing in this section will reduce, or limit, or expand Contractor's obligations under this Contract.

**Agreement and Signature**

By submission of this application, the applicant and person signing on behalf of any applicant subscribes and affirms under penalties of law that the statements made in this application for inclusion to the Participating Contractor Network have been examined and to the best of his/ her knowledge and belief are true and correct. The applicant affirms that no person named in this application is subject to disqualification under the terms and guidelines of the state of New Jersey unless herein stated. The applicant understands that by signing this application it consents to any other inquiry to verify or confirm the information herein. As a Contractor you acknowledge you are acting as an independent entity to provide Energy Efficiency services for the JCP&L Direct Install Program and have not entered into a contractual agreement with JCP&L or any entity of WILLDAN.

Authorized Representative (Please print):	Title:	Date:
Signature:		