

# General Terms and Conditions For Propane Initiative

Focus on Energy, Wisconsin utilities' statewide energy efficiency and renewable resource program ("FOCUS ON ENERGY®"), makes available certain incentives, grants, rewards and other assistance programs (each a "Program" and collectively "Programs") for different classes and types of applicants ("Applicants") throughout Wisconsin.

These General Terms and Conditions (the "Terms and Conditions") shall apply to:

- All Program applications hosted at <https://focusonenergy.com/about-us/program-applications>;
- All applications for project pre-approval;
- All "Program Payments" (as defined below) submitted by an Applicant to Focus on Energy ("Applications"); and
- All Focus on Energy "Applicants" seeking to become eligible to participate in the Focus on Energy Program.

By submitting an Application to Focus on Energy, Applicant expressly agrees to be bound by the terms of these Terms and Conditions. Aptim Government Solutions, LLC ("Program Administrator") is the contractor hired by the Statewide Energy Efficiency and Renewable Administration, Inc. ("SEERA") to administer Focus on Energy. Except where explicitly stated otherwise, "Focus on Energy" shall refer to the Program Administrator in its capacity as the responsible party for administering the Programs, and shall also include any of Program Administrator's implementers or sub-contractors assisting with the administration of the Programs. The Program Administrator, Focus on Energy and the Applicant may be individually referred to herein as a "Party" and collectively as the "Parties".

**Section 1. Incentive Offer:** Monetary incentives or rewards from Focus on Energy ("Program Payments") shall be available to eligible Applicants according to the terms on the applicable Program and related Application as well as these Terms and Conditions. Products must be purchased and installed within the date range outlined on the Application. Applications must be postmarked within the number of calendar days reflected on the Application. The Applicant understands that Focus on Energy must pre-approve all custom incentive Applications in writing. Applicants should maintain a copy of their Application for their records. Incomplete Applications will be returned and will not be processed. Applications must have complete information and be submitted with proof of purchase, such as receipts or invoices that clearly itemize the product(s) and/or services(s) received. Purchase orders, proposals and quotes are not considered proof of purchase.

**Section 2. Compliance:** The Applicant's procurement, installation and implementation of energy efficiency and/or renewable energy measures shall be accomplished in accordance with the requirements outlined in the agreement between Applicant and Focus on Energy outlining the terms of the applicable incentive (an "Incentive Agreement"). The Applicant shall deliver to Focus on Energy a "Completion Notice" by the "Project Completion Deadline" noted in the applicable Incentive Agreement. If this is not completed, the process will be terminated and the Applicant will be required to re-apply. The Applicant must provide invoices for equipment purchased or service performed, as well as documentation that verifies that the renewable and/or energy efficiency measures, (i) have been properly installed, (ii) are functioning properly, and (iii) have the potential to generate energy savings if properly maintained and operated. All projects shall comply with federal, state and local regulations. All equipment must be new; used or rebuilt equipment is eligible only when pre-approved by Focus on Energy in writing. Displaced equipment must

be removed and not reused. Equipment purchased under a capital lease structure may qualify for an incentive, but must be pre-approved by Focus on Energy in writing prior to project initiation or the execution of any equipment lease. Applicant's compliance with the terms and conditions of this Section 2 shall be at Focus on Energy's sole discretion.

**Section 3. Marketing:** The Applicant shall not use Focus on Energy's name, logo, identity, any affiliation, or any related logo, for any marketing, advertising or solicitation without prior written consent of Focus on Energy. Such written consent may be withheld in Focus on Energy's sole discretion. Focus on Energy consent shall in all circumstances be subject to Applicant collaborating with Focus on Energy to prepare any press release(s) and to plan for any news conference. Applicant agrees to provide Focus on Energy, for its written approval prior to publication, a written copy of any advertisements or promotional material regarding the project prior to publishing any such advertisements or promotional material. Focus on Energy reserves the right to publicize the Applicant's participation in the Program unless a written request is submitted to [marketing@focusonenergy.com](mailto:marketing@focusonenergy.com) no later than fifteen (15) days after receiving payment from Focus on Energy. Such right to publicize by Focus on Energy is part of Applicant's consideration for participation in the Focus on Energy Program. For purposes of the foregoing, to the extent applicable, Applicant grants Focus on Energy a nonexclusive, fully-paid up, irrevocable license to Applicant's name and logo solely for the purpose of publicizing Applicant's participation in the Program.

**Section 4. Program Discretion:** Program Payments are available on a first-come, first-served basis. Program Payments are subject to change or termination without notice at the sole discretion of Focus on Energy. Some Focus on Energy participating electric and/or natural gas utilities have incentive programs independent of Focus on Energy. These customers should check with their electric and/or natural gas utilities to verify eligibility rules for any utility programs. Focus on Energy excludes internal labor (i.e. non-contracted labor) for private companies or individuals when calculating total project costs.

Applicants who are served by a participating electric utility but not a participating natural gas utility will only qualify for incentives for electric technologies. Applicants who are served by a participating natural gas utility but not a participating electric utility will only qualify for incentives for natural gas technologies. Applicants who have both a qualifying electric utility and a qualifying natural gas utility will qualify for incentives on both electric and natural gas technologies. Applicants who use "Liquid Propane" (LP) and who are served by either a participating natural gas or electric utility may qualify for incentives. Other non-qualifying fuels will not qualify for incentives for any gas technologies.

Focus on Energy reserves the right to change or discontinue any Program at any time without notice.

Focus on Energy also reserves the right, in Focus on Energy's sole discretion, to withhold or terminate Program Payments if:

- a) An identified problems with a project is not resolved, due to an Applicant's failure to follow any and all applicable terms and conditions, rules, or procedures; or
- b) Focus on Energy determines that Applicant's receipt of Program Payments will not result in the implementation of any Measures (as defined in Section 9 below) by Applicant, or if the Measures will not result in the reduction of energy usage or generation of renewable energy; or
- c) The Applicant becomes "Insolvent" (which shall mean Applicant (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, including but not limited to the United States Bankruptcy Code or the laws of any state, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes the subject of a bankruptcy proceeding or insolvent (however evidenced); (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due).

The acceptance of an Application, and qualification of systems, is determined solely by Focus on Energy. Receipt of a completed Application does not guarantee payment of a Program Payment.

**Section 5. Disclaimers, Representations, and Warranties:** Focus on Energy, the Program Administrator, the Public Service Commission of Wisconsin and SEERA (collectively for this section “Focus on Energy”) do not endorse any particular trade ally, manufacturer, product, system, or design by offering an incentive. Focus on Energy is not responsible for any tax liability imposed on the recipient as a result of the payment of incentives. FOCUS ON ENERGY MAKES NO REPRESENTATION OR WARRANTY, AND ASSUMES NO LIABILITY WITH RESPECT TO THE QUALITY, SAFETY, PERFORMANCE, OR OTHER ASPECT OF ANY DESIGN, CONSULTING, PRODUCT, SYSTEM, EQUIPMENT, OR APPLIANCE INSTALLED OR RECEIVED AND EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS, WARRANTIES, AND LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Focus on Energy does not guarantee that installation and operation of incentivized measures will result in reduced energy usage or in cost savings. Focus on Energy is not responsible for the proper disposal/recycling of any waste generated as a result of this project. FOCUS ON ENERGY IS NOT LIABLE FOR ANY DAMAGES, INCLUDING ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE OPERATION OR MALFUNCTION OF THE PRODUCTS, EQUIPMENT, OR APPLIANCES, OR THE INSTALLATION THEREOF.

**Section 6. Monitoring, Verification, Record Keeping, and Right to Inspect:** Focus on Energy evaluates Program efficacy by monitoring energy use/production prior to and after installation of energy efficiency or renewable energy projects. Focus on Energy, and its designated representatives, shall have the right to:

- (a) monitor energy use/production prior to and after installation of a project;
- (b) perform an inspection of project records or the project itself to evaluate Program efficacy for a period of two (2) years from the date of Program Payment; and
- (c) withhold or terminate payment for failure to allow for a post-installation inspection.

The Applicant’s signature on an Application constitutes the Applicant’s consent for its electric and/or natural gas utility to disclose the Applicant’s energy usage data directly to Focus on Energy. The Applicant and its subcontractors shall maintain accurate records of the project work (e.g., installation records, invoices, and maintenance information) that is performed hereunder for a period of two (2) years from the date of a Program Payment.

**Section 7. Indemnification:** Applicant shall protect, indemnify, defend and hold harmless Focus on Energy, Program Administrator, SEERA, the State of Wisconsin and participating utilities, their respective affiliates, subsidiaries, parent companies, officers, directors, agents, and employees, against any and all losses, damages, expenses, fees, costs and liability arising from or in any way connected with any program, design, consulting, product, system, equipment, or appliance. This indemnification obligation shall include, but not be limited to: (a) Applicant’s breach of any obligations under these Terms and Conditions; (b) personal injury, death or tangible property damage; or (c) Applicant’s violation of any applicable law, regulation, rule, court order or breach of any obligation to a third party. The Applicant agrees that its indemnification obligations under this Section 7 shall survive any expiration or termination of the Application and shall not be limited by any enumeration herein of required insurance coverage. To the maximum extent permitted by law, the Applicant agrees to limit Program Administrator’s liability to the

Applicant for any reason to the total amount of the payments identified in this Agreement. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

**Section 8. Misrepresentation:** Making false statements on any Focus on Energy incentive application is punishable by law. Any person who knowingly files an application containing any materially false information or who purposely and misleadingly conceals information commits a fraudulent act that subjects such person to criminal and civil penalties. Applicant hereby agrees and acknowledges that any Program Payments determined, in Focus on Energy's sole discretion, to have been acquired by Applicant on the basis of fraudulent or misrepresented information will be fully and immediately returned to Focus on Energy. Should the Applicant or any of its representatives apply for and receive duplicate Program Payments, Focus on Energy reserves the right to recover any payment that exceeds the amount that Focus on Energy committed to pay Applicant in writing. This section shall not limit other remedies that may be available to Focus on Energy arising from Applicant filing a false or fraudulent Application.

**Section 9. Miscellaneous:**

**Governing Law.** All Applications, Incentive Agreements and these Terms and Conditions shall be governed, construed and enforced in accordance with the internal laws of the State of Wisconsin, without regard to any conflicts of laws principles that may direct the application of the laws of another jurisdiction. The Applicant irrevocably submits to the original jurisdiction of the state and federal courts sitting in Madison, Wisconsin with regard to any controversy in any way relating to the execution, delivery or performance of an Application or Incentive Agreement. Suits, claims or actions founded upon such controversies shall be brought or filed exclusively in such courts and nowhere else. The exclusive venue for any dispute or controversy arising under an Application or Incentive Agreement shall be the Dane County, Wisconsin Circuit Court or the Federal District Court for the Western District of Wisconsin.

**Compliance with Applicable Laws.** The Applicant shall at all times comply with and observe all federal and Wisconsin state laws and published circulars, local laws, ordinances, rules and regulations which are in effect from the time at which Applicant submits an Application or enters into an Incentive Agreement to Applicant's receipt of a Program Payment, and which in any manner affect the performance of an Application or Incentive Agreement. All references to statutes or regulations contained in any Application, Incentive Agreement or these Terms and Conditions shall be construed to include successors thereto.

**Assignment.** Focus on Energy may assign, transfer or convey any Application or any of Focus on Energy's rights, obligations, interests or responsibilities thereunder, in whole or in part, without the consent of the Applicant. Neither an Application nor any rights or obligations hereunder or thereunder may be sold, assigned, transferred or otherwise disposed by Applicant, whether pursuant to a change of control, by operation or law or otherwise, without Focus on Energy's prior written consent.

**Severability.** If any provision of any Application, Incentive Agreement or these Terms and Conditions is construed by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, that provision shall be fully severable and the Application, Incentive Agreement and these Terms and Conditions shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part thereof. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, the Application, Incentive Agreement and these Terms and Conditions shall be reformed to include as a part of the Application, Incentive Agreement and these Terms and Conditions a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

**Risk of Loss.** The Focus on Energy Parties at no time assumes risk of loss for any personal property of the Applicant.

**Waiver.** Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.