

NYS Clean Heat Program

Midstream Distributor Heat Pump Water Heater Incentives *Aggregator Participation Agreement*

Aggregator Name:

Participation Agreement Number:

Program overview

The **NYS Clean Heat Midstream Distributor Heat Pump Water Heater Incentive** Program (“Program”) is sponsored by New York State Electric & Gas (“Sponsor”) and reimburses eligible distributors for incentives delivered as a reduction in purchase price on the sale of approved heat pump water heater products and equipment (“HPWHs”) that meet the eligibility guidelines found in the current **NYS Clean Heat Program Manual**. This Clean Heat Midstream Distributor Heat Pump Water Heater Program Participation Agreement (“Agreement” or “PA”) sets forth the terms and conditions under which approved distributors will engage with Program Administrator, ICF Resources, LLC (“ICF”), to participate in the Program.

In consideration for and as a condition of participation in the Program, the distributor named above (“Distributor”) agrees to the Program terms and conditions set forth in this Agreement. Sponsor has authorized ICF to administer the Program, including but not limited to such activities as review, processing and approval of Program incentives; measurement and verification activities; and issuing incentive payments. Distributor agrees that Sponsor is an intended beneficiary of this Agreement and, as such, may rely on any representations made herein by Distributor and enforce Distributor’s obligations hereunder to the extent the same are applicable to the Program.

ICF reserves the right to modify the Program Term in its sole discretion. The term of this Agreement shall run concurrently with the Program Term, unless otherwise terminated as provided by this Agreement.

Program eligibility and participation overview

Distributor eligibility, obligations and requirements

Distributor must comply with all requirements set forth in this Agreement to be eligible to receive Program incentive reimbursements.

Distributor recognizes that the Program is intended to provide incentives on HPWHs sold to Sponsor’s customers with active electric accounts or to licensed contractors installing HPWHs on behalf of those customers. Incentives delivered by Distributors on HPWH sales to parties not meeting the above criteria will not be reimbursed by Sponsor.

Distributor is eligible for incentives if it meets the following requirements:

- Distributor has verified that a customer has an active Sponsor electric account number.
- Distributor is qualified as an authorized distributor by the manufacturer of the HPWHs submitted for payment under this Agreement. All HPWHs submitted for reimbursement in the Program must be purchased directly from a manufacturer or authorized manufacturer representative. ICF reserves the right to request supporting documentation verifying this business relationship (e.g., HPWH purchase orders and manufacturer invoices).
- Distributor’s primary source of revenue must be from the sale of HVAC and/or plumbing products and equipment to end users or contractors installing said HPWHs. Companies whose primary source of revenue is the contracting of HVAC and/or plumbing services are not eligible to participate as a Distributor in the Program. HPWH sales to other distributors do not qualify for incentive reimbursement. ICF reserves the right to request documentation confirming compliance.

Distributor agrees to the following:

- Distributor will pass the Sponsor’s Category 5a – Midstream HPWH incentive shown in tables 11 and 13 of the Program Manual, after subtracting the Distributor Bonus shown in tables 11 and 13, directly to the HPWH Installer as a reimbursement for the HPWH Installer having provided an instant discount to the customer, as well as to pass along the contractor bonus shown in tables 11 and 13, which is to be retained by the HPWH Installer. The Distributor may choose to credit the HPWH Installer after having received the incentive payment from Sponsor or provide an instant discount to the HPWH Installer when the Partner buys eligible HPWHs.
- Distributor is not, and shall not represent itself to be, an agent of Sponsor or ICF.
- Distributor agrees to allow ICF to meet with its sales team and HPWH Installers at a time designated by Distributor regarding the Program and the benefits thereof.

NYS Clean Heat Program

Midstream Distributor Heat Pump Water Heater Incentives Aggregator Participation Agreement



- Distributor agrees to provide ICF with good faith forecasts of the number of eligible HPWHs in the Sponsor's designated Service Territory that Distributor expects to sell by Program End Date. Forecasts are used at each milestone date indicated in the Program Manual to determine possible reallocations in funding as in accordance with achieving the performance milestones as indicated.
- Where necessary and appropriate, Distributor agrees to use HPWH Installers that hold the necessary industry-specific licensures or certifications and are in good standing with said licensing bodies.

HPWH installer obligations to be communicated by distributor

As a condition of its participation in the Program, Distributor shall communicate the following requirements to each of its HPWH Installers; however, Distributor shall not be liable for any specific HPWH Installer's failure to comply.

Under no circumstances shall HPWH Installer release or transmit to the public any marketing and advertising material without Sponsor's prior written approval as set forth in this Agreement. Failure of Sponsor to provide its written acceptance, as set forth herein, shall not be deemed to constitute Sponsor's approval or acceptance.

HPWH Installer is required to notify customer at the time of sale that HPWH pricing was subsidized by Program incentives and provide the customer with an instant discount equal to the total Category 5a – Midstream HPWH incentive shown in tables 11 and 13 of the Program Manual, minus the distributor and contractor bonuses shown in tables 11 and 13 of the Program Manual. The instant discount must be clearly displayed on the customer's invoice as being provided by Sponsor. Sponsor is not obligated to pay the rebate or associated distributor and contractor bonuses if the HPWH Installer fails to show the instant discount on the customer's invoice. HPWH Installers are responsible for obtaining building permits, as required by the applicable code authority, for each HPWH for which an Incentive Payment is requested.

Customer eligibility requirements

To be eligible for a NYS Clean Heat Midstream HPWH incentive, the customer must:

- Be a residential 1–4 electric account holder
- Have domestic hot water needs that can be satisfied in whole by a residential schedule HPWH (no more than 120-gallon capacity and powered by single-phase electricity)

HPWH eligibility guidelines

Distributor is eligible to receive incentives only on eligible HPWHs per NYS Clean Heat Program Incentive Category 5a, as detailed in the Program Manual, and at the Sponsor's incentive levels shown in tables 11 and 13. Further technical eligibility requirements for HPWHs can be found in Section 3.2.4.1, and warranty requirements can be found in Section 3.1.3 of the [NYS Clean Heat Program Manual](#).

Sponsor and ICF, at their sole discretion, can establish and periodically amend Program HPWH eligibility requirements and the incentive levels. Any such updates shall be published in the Program Manual.

Program participation guidelines

Customer invoices for all transactions submitted for reimbursement to the Program must state in writing that the sale price was subsidized by an incentive provided by Sponsor. The incentive can be listed per line item or shown as a total incentive for all HPWHs purchased on the invoice. Invoices without written mention of the Sponsor incentive received by the customer will be denied reimbursement.

As a requirement of participating in this Program, Distributor must provide accurate and true sales data for all eligible HPWHs, as well as aggregate data on non-qualifying sales.

Project inspections of customer projects are completed to verify that the HPWH Installer has complied with Program requirements, including without limitation, installation, completeness and accuracy of Program documents and invoices. Project inspections may be performed by a NYS Clean Heat Quality Service Provider (QSP). Distributor will ensure that the HPWH Installer shall cooperate and make a good faith effort to participate in all project inspections, if so requested.

Distributor is responsible for managing the assigned Program incentive budget allocation for the indicated Program Term. ICF may deny payments for incentives associated with any sales orders that result in Distributor exceeding its incentive budget allocation. ICF reserves the right to review the Distributor's Program performance and make modifications to Distributor's incentive budget allocation at the performance milestone dates outlined in the Distributor's allocation. In the event that Distributor's incentive budget allocation is modified, ICF will resend a revised budget allocation notification within one week of each performance milestone date. If a Distributor has no submittals for ninety (90) days, the funding allocation assigned to the Distributor will be reviewed and may be reduced. In the event that the funding allocation is reduced to zero, ICF may terminate this Agreement according to this Agreement's termination provision and may reallocate funding as necessary.

NYS Clean Heat Program

Midstream Distributor Heat Pump Water Heater Incentives
Aggregator Participation Agreement



Distributor incentive reimbursements

The Program is intended as a discount program for qualifying energy-efficient HPWHs.

ICF reserves the right to request reimbursement for all incentives paid to Distributors found to have made non-qualifying offers in the market in conjunction with the Program.

Distributors are eligible to retain their portion of the incentive for each HPWH. Distributors may use these funds at their discretion to promote the sale of high-efficiency HPWHs incentivized by the Program. Examples of effective uses of incentive funds include:

- Targeted marketing campaigns
- Bonus programs for salespeople or contractors
- Additional incentives offered to eligible customers

Incentive reimbursement process

ICF will review Distributor applications with the goal of reimbursing Distributor within thirty (30) days of the Distributor satisfactorily completing the incentive reimbursement requirements defined in the Program Manual, provided the Distributor is in full compliance with all other Agreement requirements and the application is complete, accurate and the HPWH installed is eligible. ICF's payment obligations are contingent on ICF's receipt of approval to pay from Sponsor. The value of incentives paid to the Distributor will be based on the HPWH incentive levels defined in the Program Manual at the time of installation. ICF and Program Sponsor reserve the right to make final determination of eligibility, qualifying measures, Program compliance and final incentive payments.

Invoice dates must be within the current Program year, indicating that the transactions occurred between the Program Start and End Dates. Final application submissions for the Program Term must be received by ICF within two weeks of the Program End Date, unless ICF notifies Distributor of a different application submission deadline. Applications received after the application submission deadline may not be processed for payment or may be delayed until the next Program Year, if applicable.

Program marketing, trademarks and branding

The Distributor shall promote the Program only to customers who meet the customer eligibility requirements detailed in this Agreement and the Program Manual. While the HPWH Installer must initially verify customer eligibility, Distributor should also verify customer eligibility in accordance with this Agreement when it reviews Partner applications before submitting to ICF. A Distributor will not receive incentive payments for ineligible applicants.

Distributor acknowledges and agrees that Sponsor is the lawful owner of all right, title and interest in and to Sponsor's respective names and logos and that Distributor will not at any time dispute or contest, directly or indirectly, Sponsor's exclusive right and title to, and validity of, its respective name and logo.

Sponsor hereby grants Distributor the right to use its name and logo in connection with the Program pursuant to the terms and conditions contained in this Agreement. The right to use such names and logos as set forth herein shall be concurrent with the term of this Agreement, and any and all such rights shall terminate upon termination of this Agreement for any reason.

The Sponsor logo and the URL may be added to all materials and advertising approved for use pursuant to this Agreement (except for pre-printed, stock HPWH packages) but shall only be used in the form and format as such logos are provided for use by Sponsor and require Sponsor approval of use in writing. Failure of Sponsor to provide its written acceptance, as set forth herein, shall not be deemed to constitute Sponsor's approval or acceptance.

Distributor agrees not to act in a manner that is inconsistent with Sponsor's ownership of its respective name and logo or that is likely to subject Sponsor to claims by third parties or potential loss of any rights therein, and agrees and acknowledges that its use of the Sponsor name and logo inures to the benefit of Sponsor.

Distributor acknowledges that maintaining a high standard of quality for the Program materials bearing Sponsor's name and logo and maintaining the goodwill associated with such names and logos are of substantial importance to Sponsor. Distributor therefore agrees that all materials to be used in connection with the Program shall be submitted for prior review and written approval by Sponsor. Failure of Sponsor to provide its written acceptance, as set forth herein, shall not be deemed to constitute Sponsor's approval or acceptance.

When used in accordance with this Agreement, Sponsor will defend and indemnify Distributor against all allegations, claims, damages, expenses (including attorneys' fees) and liabilities relating to or arising out of an alleged infringement of any trademark, copyright or any other intellectual property right relating to Sponsor's names, logos, trademarks and URLs.

NYS Clean Heat Program

Midstream Distributor Heat Pump Water Heater Incentives
Aggregator Participation Agreement



Program terms and conditions

Program modifications or termination

The Program will terminate on the earliest of the following occurrences: (a) the end of the Program Term or (b) the depletion of the Program funding. Distributor acknowledges that Sponsor retains the right to terminate the Program at its sole discretion. In the event the Program is terminated before the end of the Program Term, Distributor shall receive no less than thirty (30) days' notice of termination of the Program.

Funds are limited and incentive applications are accepted on a first-come, first-served basis. Distributor acknowledges that ICF's payment obligations under this Agreement are contingent on ICF receiving Program funds during the Program Term from Sponsor. In the event that the Program is terminated due to depletion of Program funding, ICF agrees to pay the incentives as specified in the Program Manual for qualified HPWHs only until the incentive funds provided to ICF for the Program term are exhausted.

Sponsor or ICF may modify the Program eligibility requirements, incentive requirements or any other elements of this Program at its sole discretion. Such modifications will be communicated to Distributor in writing. In the event that any changes are made to the Program, Distributor will be responsible for ensuring compliance. Distributor will have thirty (30) days from date of notice to enact and communicate these changes to ensure that all HPWH projects are brought under compliance of the new Program rules. Any HPWHs sold out of compliance after the thirty (30)-day grace period will be disqualified and will not receive any payment for sales or any associated fees.

Limitation of Liability

IN NO EVENT SHALL DISTRIBUTOR, SPONSOR OR ICF BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES. ICF'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO PAYING THE PROGRAM FEES AS SET FORTH HEREIN, BUT ONLY IF SUCH PROGRAM FEES BECOME DUE AND PAYABLE PURSUANT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND PROVIDED THAT DISTRIBUTOR HAS COMPLIED WITH ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

Termination of agreement

ICF may modify or terminate the Agreement at its sole discretion upon seven (7) days' written notice prior to such modification or termination and reallocate funding, as necessary. In the case of modification, cancellation or termination of this Agreement, ICF and Sponsor agree to pay the incentives as specified on qualifying HPWHs installed up to and including the date of such modification, cancellation or termination, provided that the Distributor submits requests for such incentives in accordance with the terms of this PA.

Distributor may discontinue its participation in the Program at its sole discretion upon seven (7) days' written notice to ICF.

In the event that ICF determines that Distributor does not meet the terms and conditions set forth in this Agreement or has failed to sell HPWHs in a manner that is consistent with the Program's goals (as determined by the Program), ICF will provide Distributor written notice to cure such failure to meet the terms and conditions or sell HPWHs in a manner that is consistent with the Program goals. Should Distributor fail to cure such failure within seven (7) days of receipt of written notice from ICF, ICF may elect to terminate the Agreement by written notice to Distributor, effective as of the date of Distributor's receipt of such notice.

Indemnification

Distributor shall indemnify, defend and save harmless ICF, Sponsor and their respective officers, directors, representatives, members, shareholders, employees, affiliates, agents and successors (each an "Indemnified Party") from and against any and all damages, losses, liabilities, claims, lawsuit and expenses (including reasonable attorney fees) arising out of or resulting from any and all claims based on (i) HPWH liability with respect to the HPWHs, including but not limited to HPWH defects, deficiencies or nonconformities, HPWH design and manufacture; (ii) any personal injury, death, damage to real or tangible property caused by Distributor's negligence or willful misconduct or (iii) any liability, claim, damage, cost or expense arising out of or resulting from any actions alleging or determinations made that the HPWHs infringe any issue patent or that any of the HPWHs infringe any copyright, trade secret or any other intellectual property rights of any third party.

Fraud

In the event that ICF determines that Distributor has engaged in fraudulent activity or misrepresentation of any kind, ICF may terminate this Agreement by written notice to Distributor, effective as of the date of Distributor's receipt of such notice. The value of any and all funds or services determined to have been acquired on the basis of inaccurate or fraudulent information must be returned to the Program.

ICF reserves the right, from time to time, to evaluate and/or measure Program HPWH sales to determine the effectiveness of the Agreement and Distributor's activities in connection with the same.

NYS Clean Heat Program

Midstream Distributor Heat Pump Water Heater Incentives Aggregator Participation Agreement



Miscellaneous

The terms and conditions of this Agreement may only be amended or modified by an instrument in writing duly executed by the parties hereto.

This Agreement shall be governed and construed in accordance with the laws of the state of New York. The waiver by a party of a breach or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any of the parties hereto.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

The relationship of the parties is that of independent contractors. None of the provisions of this Agreement is intended to create nor will be construed to create an agency, partnership or employment relationship among or between the parties. No party, nor any of its respective officers, members or employees, will be deemed to be the agent, employee or representative of the other parties.

No party shall be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of another party or its agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages or vendor non-performance. Despite the potential for force majeure events, certain of the Program's time frames and calendar dates shall not be extended (e.g., the Program End Date).

Each party (the "Receiving Party") will treat as confidential all information disclosed by the other party (the "Disclosing Party") or learned as a result of the Agreement ("Confidential Information"). The Receiving Party will use Confidential Information received solely for the purpose of fulfilling its obligations under this Agreement. The Receiving Party will protect Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential information, but in no event less than a reasonable standard of care.

ANY REVIEW, INSPECTION OR ACCEPTANCE BY PROGRAM OF THE PROJECT SITE OR OF THE DESIGN, CONSTRUCTION, INSTALLATION, OPERATION OR MAINTENANCE OF DOMESTIC HOT WATER EQUIPMENT IS SOLELY FOR THE INFORMATION OF THE PROGRAM AND THAT, IN PERFORMING ANY SUCH INSPECTION OR REVIEW OR IN ACCEPTING ANY DOMESTIC HOT WATER EQUIPMENT, THE PROGRAM MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, CAPABILITY, SAFETY OR RELIABILITY OF THE DOMESTIC HOT WATER EQUIPMENT.

Distributor

Street Address:

City:	State:	ZIP:
-------	--------	------

Authorized Signature:	Date:
-----------------------	-------

Print Name:	Title:
-------------	--------

Phone Number:	Email:
---------------	--------