



RATER AGREEMENT:  
2018 TEXAS NEW MEXICO POWER (TNMP)  
HIGH-PERFORMANCE HOMES PROGRAM

To qualify for participation in the 2018 TNMP High-Performance Homes Program (“Agreement”), this Agreement is made by and between \_\_\_\_\_ (“Rater”) and ICF Resources, L.L.C. (“ICF”). ICF is the Program Administrator (“Program Administrator”) of TNMP’s 2018 High-Performance Homes Market Transformation Program (“Program”). This Agreement is effective on the date the last party executes this Agreement.

- 1. Home Eligibility Requirements.** For purposes of this Agreement, the term "Eligibility Requirements" or "Home Eligibility Requirements" means (i) a home must be served by TNMP in a TNMP service territory as evidenced by town, zip code and ultimately a permanent meter number or ESI ID number associated with the home; (ii) the home has not received incentives from any other TNMP energy efficiency Program as evidenced by the permanent meter number or ESI ID number submitted through the Program’s online system; (iii) a home’s construction must be completed and a permanent meter requested from TNMP between September 1, 2017 and November 30, 2018; (iv) the final HERS Rating for the home must be performed and dated between October 1, 2017 and November 30, 2018; and (v) the home must satisfy all Program requirements. TNMP will offer incentives to reward Homebuilders who deliver homes that meet the Program guidelines kilowatt hour (kWh) savings. The number of incentives awarded to each Homebuilder is determined through a competitive bid and scoring process. The incentive structure is designed to measure kWh savings achieved above the minimum Texas Baseline Reference Home. To be eligible for participation, a home must achieve at least five percent (5%) savings over the 2018 Texas Baseline Reference Home and meet all minimum energy code requirements.
- 2. Documentation for Homebuilder Incentive Payments.** Rater agrees to provide the following information (collectively, the “Documentation”) for each home for which the Rater’s Homebuilder client(s) seek an Incentive Payment: (i) a final and proper address specific REM/Rate software file with other required database details; (ii) entry of required data in the Program’s database; and (iii) additional data generated from the Rater’s REM/Rate home energy rating software, if requested in writing by ICF. Within thirty (30) calendar days after the Rater’s Homebuilder client submits homes through the online system, the Program Administrator will confirm that the documentation for the home meets the requirements of this Agreement and does not provide duplicate information concerning a previously submitted home. Failure to provide accurate information can delay payment of incentives to the Homebuilder and may result in forfeiting payment of incentives for homes in question if not resolved before November 30, 2018. Rater also hereby agrees that all rating information submitted to the Program is accurately reported as meeting Residential Energy Services Network (RESNET) guidelines. Any discrepancies or conflicting data will result in forfeiture of incentives for said home.
- 3. Rater Eligibility Requirements**

HERS Raters are hired by Homebuilders to provide the necessary services to complete plan analysis, inspect new homes, and ensure energy-efficient requirements and specifications are met as required by the TNMP High-Performance Homes Program, ENERGY STAR® or a Homebuilder’s kWh savings. Raters operate under the guidance of HERS Rating Providers, accredited through RESNET



(www.resnet.us), and provide third-party inspections, testing, and verification of energy-efficient measures installed in residential new homes. The Rater's primary responsibility is to work with Homebuilders to facilitate the construction of ENERGY STAR and High-Performance homes that meet the performance requirements for the TNMP High-Performance Homes Program. Rater responsibilities include:

- Providing design assistance and performing plan analysis to ensure homes meet Program criteria.
- Reviewing HVAC equipment sizing calculations and providing Homebuilder/contractor assistance in the execution of sizing documentation when necessary.
- Performing pre-drywall board inspection and final visual inspection including conducting air infiltration and duct leakage testing (including leakage to outside) to verify each home's HERS index, and completing the Thermal Enclosure Checklist as required to achieve the High-Performance standard.
- Ensuring each home meets the minimum Program requirements.
- Providing the address-specific REM/Rate file, house plan and any other requested documentation for the randomly selected QA/QC addresses to be inspected by TNMP High-Performance Homes Program Team.
- All participating Raters and HVAC Contractors MUST submit the required information for all completed homes for each participating Homebuilder monthly.

**QA/QC Reporting Requirements.** Rater agrees to provide testing schedules for purposes of the Program's Quality Assurance and Quality Control (QA/QC) process. Testing schedules must be submitted to ICF on a regular and timely basis, which shall typically be defined as no less than weekly unless the rater has no (zero) inspections scheduled for the week. Inspection schedules shall include only those qualifying homes that will be submitted to the Program via the Program's online system. Rater also agrees upon three (3) calendar days' prior verbal notice, to provide TNMP, ICF and any independent measurement and verification person selected by the Public Utility Commission of Texas with full and complete access to the following documentation for any Program home, for any purpose related to the Program and the QA/QC process: (i) building plan and spec sheets; (ii) REM/Rate files; (iii) copies of the completed Thermal Enclosure System Checklist (ES V3); (iv) ENERGY STAR Checklists; (v) AHRI certificates; and (vi) inspection results for any home submitted.

Program Administrator will implement the QA/QC throughout the Program to verify that homes meet ENERGY STAR and High-Performance requirements and that HERS Raters are following RESNET standards. All results will be shared with Homebuilders during the year.

4. **Accurate Representation of the Program, Its Policies and Procedures.** Rater shall not knowingly misrepresent any information concerning the Program, its purpose, policies and procedures, or incentive awards and reallocations of incentives. Rater's participation in the Program does not constitute an endorsement of any kind on the part of TNMP or ICF. Rater shall not state or imply any such endorsement, either directly or indirectly. Rater shall not mislead Homebuilders, other persons, or other entities about the availability of incentives or misrepresent its role in the incentive award process. Only ICF can award or reallocate incentives on TNMP's behalf to Homebuilders.

5. **HERS Rater Participation Requirements**



- A. Rater must remain a RESNET accredited HERS Rater in good standing. Rater shall agree to adhere to all practices as set forth in the RESNET Home Energy Rating Standards of Practice.
  - B. Rater shall adhere to all principles and standards of conduct as set forth in the RESNET Rating Code of Ethics.
  - C. Rater shall adhere to all quality assurance and control requirements established by RESNET.
  - D. Rater intending to inspect and verify High-Performance Homes shall maintain active status as ENERGY STAR Partner per EPA (Environmental Protection Agency) guidelines. Rater also agrees to submit all completed ENERGY STAR certificates to EPA on behalf of each Homebuilder client on a regular and timely basis and provide Homebuilder with an appropriate label for each ENERGY STAR qualified home.
6. **Quality and Accuracy of Ratings.** The Program reserves the right to discontinue accepting submissions for High-Performance qualified homes from Raters who consistently certify homes that fail to pass the QA/QC plan analysis and on-site verification conducted by a third-party verifier. The Program Administrator will notify the Rater of all discrepancies in home performance identified through the QA/QC process and provide adequate time, as agreed to by both parties, for the Rater to improve the quality of ratings. If improvements are not achieved in the period agreed to, as evidenced by QA/QC test results and third-party on-site inspections, the Program Administrator may terminate this Agreement with the Rater and the Rater will no longer be able to participate in the Program.
- THE RATER UNDERSTANDS AND AGREES THAT AS A REQUIREMENT OF THE TNMP HIGH-PERFORMANCE HOMES PROGRAM ALL QUALIFIED HOMES, OR OTHER HOMES MEETING MINIMUM PROGRAM ELIGIBILITY REQUIREMENTS, SUBMITTED TO TNMP FOR INCENTIVE PAYMENTS MUST BE AT A CONSTRUCTION STAGE WHERE THE DRYWALL, INTERIOR DOOR JAMS, HVAC SYSTEM INSTALLATION AND FINAL AIR SEALING IS COMPLETE. ANY HOMES THAT DO NOT MEET THE REQUIREMENTS, AS DETERMINED BY ICF AND/OR A THIRDPARTY VERIFIER, WILL NOT RECEIVE AN INCENTIVE PAYMENT TO THE HOMEBUILDER. FURTHERMORE, ICF MAY REQUIRE REIMBURSEMENT FROM RATER FOR INSPECTION COSTS OF ANY HOMES FOUND NOT MEETING THE REQUIREMENTS. THESE COSTS SHALL NOT EXCEED \$75 PER HOME FOR EACH HOME FAILING INSPECTION BY ICF OR ICF'S REPRESENTATIVE. RATERS WILL HAVE SOLE RESPONSIBILITY FOR COMPLIANCE OF THE HIGHPERFORMANCE QUALIFIED HOMES, OR OTHER HOMES MEETING MINIMUM PROGRAM ELIGIBILITY REQUIREMENTS, SUBMITTED TO TNMP.**
7. **Term.** This Agreement shall remain in effect until December 1, 2018; provided, however, any payments due for Documentation submitted prior to November 30, 2018 shall still be due and owing. Rater acknowledges that ICF reserves the right to terminate the Agreement, or modify this Agreement at any time, without prior notice, as may be required by governmental regulatory action; provided, however, if this Agreement is modified the Rater shall have the right to terminate the Agreement if the modified Agreement is unacceptable to the Rater.
  8. **Notices:** Sent to contacts as entered into the Program database.



9. **Additional Terms Concerning TNMP**

- A. **ANY REVIEW, INSPECTION, OR ACCEPTANCE BY THE PROGRAM, PROGRAM ADMINISTRATOR, OR TNMP OF THE PROJECT SITE OR OF THE DESIGN, CONSTRUCTION, INSTALLATION, OPERATION OR MAINTENANCE OF ANY HIGH-PERFORMANCE HOME, OR OTHER HOMES MEETING MINIMUM PROGRAM ELIGIBILITY REQUIREMENTS, IS SOLELY FOR THE INFORMATION OF TNMP AND THAT, IN PERFORMING ANY SUCH INSPECTION OR REVIEW OR IN ACCEPTING A HIGH-PERFORMANCE<sup>®</sup> HOME, OR OTHER HOMES MEETING MINIMUM PROGRAM ELIGIBILITY REQUIREMENTS, TNMP MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER, WHETHER EXPRESS 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 HIGH-PERFORMANCE<sup>®</sup> HOME, OR OTHER HOMES MEETING MINIMUM PROGRAM ELIGIBILITY REQUIREMENTS, ITS CONSTRUCTION BY THE HOMEBUILDER, OR ITS RATING BY THE HERS RATER.**
- B. ICF represents, and Rater acknowledges, that ICF is an independent contractor with respect to TNMP and the Program, and that ICF is not authorized to make representations or incur obligations on behalf of TNMP. Rater further acknowledges that TNMP is not a party to this Agreement and that ICF and the Rater are solely responsible for performance hereunder. Rater agrees that TNMP is a third-party beneficiary of this Agreement and, as such, may rely on the representations made herein by Rater and enforce Rater's obligations hereunder to the extent the same are applicable to TNMP.
- C. Rater acknowledges that TNMP makes no express warranty or representation regarding the qualifications of ICF.
- D. **HERS RATER RELEASES, INDEMNIFIES, AND HOLDS HARMLESS TNMP FROM ANY AND ALL EXISTING OR FUTURE CLAIMS, DEMANDS, LOSSES, EXPENSES, DAMAGES, ATTORNEYS' FEES AND EXPENSES, JUDGMENTS, COSTS, AND LEGAL LIABILITY ARISING FROM OR RELATED TO THE HERS RATER AGREEMENT, THE HIGH-PERFORMANCE HOMES PROGRAM, OR ANY SERVICES OR PRODUCTS PROVIDED THEREUNDER, REGARDLESS OF ANY STRICT LIABILITY OR NEGLIGENCE OF TNMP, WHETHER ACTIVE OR PASSIVE.**
10. In its relation to ICF under this Agreement, the Rater is an independent contractor and shall not be deemed a partner, agent or employee of ICF or TNMP for any purpose. Rater will pay its entire administrative, overhead and other costs; including withholding taxes, social security, unemployment, disability, health, worker's compensation or other insurance coverage. Rater shall maintain adequate insurance to protect itself from claims under worker's compensation or claims for injury or damage to property, which arises from Rater's negligence or misconduct.
11. In the event of a dispute, each party agrees to have an authorized representative empowered to resolve the dispute meet for a period of not more than three (3) calendar days to resolve the dispute. Should the dispute resolution be unsuccessful, the matter may be submitted to any court of competent jurisdiction or an alternative dispute resolution panel. No oral or written representation

made during the course of any panel proceeding or other settlement negotiation shall constitute a party admission.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regards to conflicts of law principles.
13. In no event shall ICF or TNMP be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to this Agreement, even if advised of the possibility of such damages. In no event shall ICF's liability to Rater in connection with this Agreement exceed the amount payable hereunder.
14. **RATER RELEASES, INDEMNIFIES, AND HOLDS HARMLESS ICF FROM ANY AND ALL EXISTING OR FUTURE CLAIMS, DEMANDS, LOSSES, EXPENSES, DAMAGES, ATTORNEYS' FEES, JUDGMENTS, COSTS, AND LEGAL LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, THE HOMEBUILDER AGREEMENT, THE IMPLEMENTATION PLAN, THE PROGRAM, OR ANY SERVICES OR PRODUCTS PROVIDED THEREUNDER, REGARDLESS OF ANY STRICT LIABILITY OR NEGLIGENCE OF ICF, WHETHER ACTIVE OR PASSIVE.**
15. Both parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that it is the entire Agreement between parties hereto which supersedes all prior understandings, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless it is contained in writing signed by both parties.