



## MEMORANDUM OF UNDERSTANDING

\_\_\_\_\_ (Homebuilder) and ICF Resources, LLC ("ICF"), agree as of this \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date") to enter into this Memorandum of Understanding ("MOU"). WHEREAS, Homebuilder has agreed to participate in the incentive program ("Program") offered by Texas-New Mexico Power ("TNMP") by installing HVAC products ("Products") described in Attachment A installed by a dealer, contractor or retailer ("Dealer") at a promotional incentive pursuant to the terms more fully set forth herein; and WHEREAS, ICF manages the Program on behalf of TNMP; and WHEREAS, TNMP repays to Homebuilder the monetary value of the promotional incentive pursuant to the Program.

### I. Term

- a) The time period for the Program begins January 1, 2019 and ends December 31, 2019 ("Program Term"), unless terminated earlier as provided below.
- b) The term of this MOU shall run concurrently with the Program Term. ICF, the TNMP's primary contractor, will serve as the field implementation contractor for the Program.

### II. Homebuilder Obligations

- a) Homebuilder shall ensure that all Products offered as part of the Program comply with the current qualifications described in Attachment A – Product Requirements.
- b) Homebuilder shall ensure that all Point-of-Purchase ("POP") materials and advertising that refer to the Program are approved in writing by TNMP prior to going to print. Proposed advertising to be provided in advance by Homebuilder via email to ICF's Main Contact listed within this document.
- c) Under no circumstances shall Homebuilder release or transmit to the public any marketing and advertising material without TNMP's prior written approval. Failure of TNMP to provide its written acceptance, as set forth herein, shall not be deemed to constitute TNMP's approval and acceptance.
- d) In order to receive payment pursuant to Section IV below, Homebuilder must submit the documentation as outlined in Attachment C – Required Documentation with each request for reimbursement.
- e) The final date for submission of all sales data to be used to verify Products sold through the Program is November 25, 2019, unless such date is otherwise expressly extended in writing by TNMP.
- f) Homebuilder agrees that all Products used for consideration of the incentive shall comply with the current Attachment A - Product Requirements.
- g) In the event that any changes are made to the Program, Homebuilder will be responsible for ensuring compliance. Homebuilder will have a thirty (30) day grace period from the time of the change to ensure that all Products are brought under compliance of the new Program rules. Any Products used 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.
- h) Homebuilder agrees to provide ICF with good faith forecasts of the number of eligible Products in the TNMP's Service Territory that Homebuilder expects to use by December 31, 2019. Forecasts are used at each milestone date indicated in Attachment D - Milestones, to determine possible

reallocations in funding as in accordance with achieving the performance milestones as indicated Attachment D. Homebuilder shall have no liability for the forecast provided to ICF and/or TNMP.

- i) Homebuilder agrees to allow ICF to meet with its Dealers at a time designated by Homebuilder regarding the Program and the benefits thereof.
- j) Homebuilder agrees to use a Texas State Contractors Board approved Air Conditioning and Refrigeration Contractor that is in good standing.

### **III. Dealer Obligations to be Communicated by Homebuilder**

- a) Under no circumstances shall Dealer release or transmit to the public any marketing and advertising material without TNMP's prior written approval as set forth in this MOU. Failure of TNMP to provide its written acceptance, as set forth herein, shall not be deemed to constitute TNMP's approval or acceptance.
- b) Allow the Program field team to provide TNMP-approved POP materials to be displayed next to the TNMP Products following the guidelines expressed by the Dealer; provided ICF is given sufficient and reasonable access to the Dealer's premises and provided further that Dealer's guidelines are reasonable and not contradictory to TNMP's objectives.
- c) Dealers shall not allow sales of the Products to commercial customers pursuant to the Program. ICF reserves the right to deny payment for sales that ICF has determined have been made to commercial customers.
- d) Dealers are responsible for obtaining building permits, if required by the applicable municipality, for each Product for which an Incentive Payment is requested.
- e) Dealer shall verify customer eligibility.
  - i) Products installed in newly contracted residential single-family or multifamily dwellings are eligible.
  - ii) The Product must be installed within the TNMP's Service Territory. A service territory map and list of ZIP codes are provided to each participating Homebuilder. Ultimately the customer's electric meter number will be used for verification. Meters will have TNMP name on them for identification.
  - iii) Equipment must not receive incentives from any other TNMP energy efficiency program.
  - iv) Homebuilder will ensure Dealer is informed of all requirements in this Section III.

### **IV. Payment Information**

- a) TNMP will reimburse Homebuilder the incentive amount as identified in the table in Attachment B – Incentive Structure.
- b) Each reimbursement request for payment for products sold should be submitted to the Homebuilder within thirty (30) days following the sale of the Product and entered into the Program database by the last day of the month the Homebuilder received the request. No reimbursement request will be accepted after November 25, 2019 unless specified in writing from TNMP or ICF Program staff.
- c) ICF's payment obligations under this MOU are contingent on ICF receiving an availability of funds notice from the TNMP. Changes to the availability of funding from the TNMP, including, but not limited to, modifications of individual program budgets or cancellation of programs will require modification or cancelation of this MOU.

## **V. Termination**

- a) The Program shall terminate on the earlier to occur of the following: (i) the end of the Program Term; or (ii) the Allocated Funding/Cap set forth and defined in Program Database has been depleted; (iii) if Milestones are not met in accordance with Attachment D; or (iv) if the Homebuilder and/or its participating Dealers does not meet the terms and conditions set forth in this MOU or are incapable of installing Product in a manner that is consistent with the Program's goals (as determined by TNMP), and Dealer and/or Homebuilder fail to cure such failure within seven (7) days of receipt of first written notice from ICF of such failure to meet the terms and conditions or use Product in a manner that is consistent with the Programs goals.
- b) TNMP reserves the right to, from time to time, evaluate and/or measure Program Product installations to determine the effectiveness of the MOU and Homebuilder's activities in connection with the same.
- c) TNMP may modify or terminate the Program at its sole discretion upon seven (7) days written notice prior to such modification or termination. TNMP agrees to pay the incentives as specified in Attachment B on qualified Products sold up to and including the date of termination.

## **VI. Logos and Trademarks**

- a) The TNMP logo and the URL may be added to all materials and advertising approved for use pursuant to this MOU (except for pre-printed, stock Product packages) but shall only be used in the form and format as such logos are provided for use by TNMP and require TNMP approval of use in writing.
- b) Dealer and Homebuilder each acknowledges and agrees that TNMP is the lawful owner of all right, title and interest in and to TNMP's respective names and logos and that neither Dealer nor Homebuilder will at any time dispute or contest, directly or indirectly, TNMP's exclusive right and title to, and validity of, its respective name and logo.
- c) Dealer and Homebuilder each agrees not to act in a manner that is inconsistent with TNMP's ownership of its respective name and logo or that is likely to subject TNMP to claims by third parties or potential loss of any rights therein and agrees and acknowledges that its use of the TNMP name and logo inures to the benefit of TNMP.
- d) TNMP hereby grants Homebuilder and Dealer the right to use its name and logo in connection with the Program pursuant to the terms and conditions contained in this MOU. The right to use such names and logos as set forth herein shall be concurrent with the term of this MOU and any and all such rights shall terminate upon termination of this MOU for any reason.
- e) Homebuilder and Dealer acknowledge that maintaining a high standard of quality for the Program materials bearing TNMP's name and logo and maintaining the goodwill associated with such names and logos are of substantial importance to TNMP. Homebuilder and Dealer therefore agree that all materials to be used in connection with the Program shall be submitted for prior review and written approval by TNMP.

## **VII. Limited Liability**

TNMP's total liability under this MOU shall be limited to paying the incentives as set forth herein but only if and when such incentives become due and payable pursuant to the terms and conditions set forth in this MOU and provided that Dealer and Homebuilder have complied with all of the terms and conditions contained in this MOU. ICF's total liability under this MOU shall be limited to the funds provided by TNMP for reimbursement, if applicable.

## **VIII. Indemnity**

- a) Homebuilder shall indemnify, defend and save harmless TNMP and ICF and their respective officers, directors, representatives, shareholders, employees, affiliates, agents and successors (each an "Indemnified Party") from and against any and all damages, losses, liabilities, claims, lawsuits and expenses (including reasonable attorneys' fees) to the extent arising out of or resulting from the negligence or willful misconduct of the Indemnifying Party involving an obligation of Homebuilder under this MOU.
- b) Each Party agrees that TNMP's sole obligations are set forth in this MOU and that TNMP has no control over or responsibility for Homebuilder's and/or Dealer's warranty obligations for any Products, including but not limited to Product defects, deficiencies or nonconformities, Product design and manufacturing, or the storage and handling of the Products, whether any Product infringes any copyright, trade secret, or any other intellectual property rights of any third Party, or from of any death or bodily injury to any person, damage to any property, adverse effects to the environment, or any violation of law or regulation arising out of or relating to the Products. Homebuilder, as the installer of the Products, further agrees to indemnify, hold harmless, and defend ICF and the TNMP, and their respective officers, employees, agents, representatives, and affiliates from and against any and all claims for Product defects, including claims for bodily injury, death or property damage, deficiencies or nonconformities, Product design and manufacturing, or claims alleging that the Products infringe the intellectual property rights of a third party. Homebuilder expressly acknowledges that the TNMP is an intended beneficiary of this section VIII.
- c) If any third Party institutes legal actions or claims against an Indemnified Party for which the Indemnified Party may be entitled to a defense or indemnity or to be held harmless pursuant to the preceding paragraph, then the Indemnified Party shall notify the other Parties of any such claims and shall permit the Indemnifying Party (ies) to defend or settle such claims, provided however, no settlement shall admit liability for or on behalf of the Indemnified Party. The Indemnifying Party (ies) shall pay the costs of such defense and any judgment or settlement resulting therefrom. The Indemnified Party shall provide all reasonable assistance for the defense or settlement of all such legal actions or claims. The Indemnifying Party(ies) shall assume the defense and control of such claim or action but shall allow the Indemnified Party reasonable opportunity to participate in the defense thereof with its own counsel and at its own expense.

## **IX. Miscellaneous**

- a) This MOU embodies the entire MOU and conditions relating to the subject matter hereof. This MOU may only be amended or modified by an instrument in writing duly executed by the Parties hereto; provided, however, TNMP may make the following changes unilaterally by providing written notice to Homebuilder and Dealer of such change:
  - i) Revision to the contact information listed at the end of this section.
- b) Changes to this MOU pursuant to the aforementioned exceptions will be communicated in writing to the Homebuilder named in this MOU without the need for signature by the Parties.
- c) In all instances, ICF shall be the final signatory and this MOU and any subsequent addendums or modifications shall only be considered active upon the signature of ICF. Actions taken by the Homebuilder and/or Dealer prior to the signature of ICF are to be considered outside the scope of this agreement and neither ICF nor TNMP will be liable for costs incurred by the Homebuilder and/or Dealer in furtherance of this agreement prior to receiving a signed authorization by the ICF.

- d) This MOU shall be governed and construed in accordance with the laws of the State of Texas. The waiver by a Party of a breach or provision of this MOU shall not operate or be construed as a waiver of any subsequent breach by any of the Parties hereto. This MOU may not be assigned by Dealer or Homebuilder without the express written consent of TNMP. This MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. Venue shall be in the state and federal courts located in Denton County, Texas. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THE AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**
- e) The relationship of the Parties is that of independent contractors. None of the provisions of this MOU 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 its respective officers, members, or employees, will be deemed to be the agent, employee, or representative of the other Parties.
- f) The provisions relating to indemnity and limitation of liability contained in this MOU shall survive termination of this MOU and continue to bind the Parties. This MOU is intended for the benefit of the Parties hereto and does not grant any rights to any third Parties. In no event shall any Party be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages except to the extent of the indemnity obligations of any Party herein.
- g) No Party shall be liable nor in breach or default of its obligations under this MOU 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 or shortages. The performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay.

**X. Additional TNMP Terms**

- i. ICF represents, and Homebuilder 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. Homebuilder further acknowledges that TNMP is a party to this Agreement for payment reimbursements, and that ICF and Homebuilder are solely responsible for performance hereunder. Homebuilder agrees that TNMP is a third-party beneficiary of this Agreement and, as such, may rely on the representations made herein by Homebuilder and enforce Homebuilder's obligations the extent the same are applicable to TNMP.
- ii. Homebuilder 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 any Program home for any purpose related to the Program. Access shall be in compliance with the Homebuilder's reasonable access requirements and access request is prior to property closing date and transfer to the new home owner at which point all access requests shall be through the home owner.
- iii. **ANY REVIEW, INSPECTION, OR ACCEPTANCE BY TNMP OF THE PROJECT SITE OR OF THE DESIGN, CONSTRUCTION, INSTALLATION, OPERATION OR MAINTENANCE**

OF HVAC EQUIPMENT IS SOLELY FOR THE INFORMATION OF TNMP AND THAT, IN PERFORMING ANY SUCH INSPECTION OR REVIEW OR IN ACCEPTING AN HVAC EQUIPMENT, 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 HVAC EQUIPMENT OR ITS INSTALLATION BY DEALER.

- iv. Homebuilder acknowledges that TNMP makes no express warranty or representation regarding the qualifications of ICF.

*MAIN CONTACT FOR THIS PROMOTION*

Maci McDaniel, ICF Program Manager  
Maci.McDaniel@icf.com  
(713) 445-2006

*UTILITY'S PAYMENT/REIMBURSEMENT SUBMISSION INFORMATION*

Homebuilder should submit all invoices via database at: [https://\\_\\_\\_\\_\\_](https://_____)

In witness whereof, the parties have caused this MOU to be signed by their respective duly authorized representatives.

**HOMEBUILDER**  
[Name of company]

ICF  
ICF Resources, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Email

## **ATTACHMENT A - PRODUCT REQUIREMENTS**

All systems accepted into the Program must meet the following eligibility requirements.

Residential systems must meet or exceed the following efficiency requirements and must be within the following capacity requirements:

- A/C systems: minimum 15 SEER/12 EER, 18,000 to 60,000 BTUH
- Heat pump systems: minimum 15 SEER/12 EER/8.6 HSPF, 18,000 to 60,000 BTUH

The following additional requirements must also be met:

- All systems must be AHRI-matched, as evidenced by the appropriate AHRI rating. AHRI number for the equipment must be, submitted to TNMP by the Homebuilder for each system, unless supplied by the contractor previously. All submitted equipment combinations must be active in the AHRI directory.
- Equipment shall be properly sized to dwelling based on ACCA Manual J, 8<sup>th</sup> Edition and ACCA Manual S - 2014 Standards
- Window or room air conditioning units **are not eligible**.
- Heat pump units are eligible provided they meet the minimum SEER/EER values.

## ATTACHMENT B – INCENTIVE STRUCTURE

**2019 Financial Incentives.** TNMP will offer incentives to reward Homebuilders who utilize HVAC systems that meet current Program guidelines (SEER/EER/HSPF) as stated in Attachment A – Product Requirements. The number of incentives awarded to each Homebuilder is determined through a competitive bid and scoring process. Heat Pumps incentives are in addition to the incentives for the AC SEER level.

### New Construction - AC Systems

| Size<br>(BTUH) | SEER (Incentive) |           |           |           |        |
|----------------|------------------|-----------|-----------|-----------|--------|
|                | 15.0-15.9        | 16.0-16.9 | 17.0-17.9 | 18.0-20.9 | 21.0+  |
| 18,000         | \$ 24            | \$ 44     | \$ 30     | \$ 46     | \$ 70  |
| 24,000         | \$ 32            | \$ 60     | \$ 42     | \$ 62     | \$ 92  |
| 30,000         | \$ 40            | \$ 74     | \$ 52     | \$ 78     | \$ 116 |
| 36,000         | \$ 48            | \$ 90     | \$ 62     | \$ 94     | \$ 138 |
| 42,000         | \$ 56            | \$ 104    | \$ 72     | \$ 110    | \$ 162 |
| 48,000         | \$ 64            | \$ 118    | \$ 82     | \$ 124    | \$ 184 |
| 60,000         | \$ 80            | \$ 148    | \$ 102    | \$ 156    | \$ 232 |

### New Construction – Heat Pumps

| Size<br>(BTUH) | HSPF (Incentive) |         |         |         |        |
|----------------|------------------|---------|---------|---------|--------|
|                | 8.6-8.9          | 9.0-9.2 | 9.3-9.4 | 9.5-9.6 | ≥9.7   |
| 18,000         | \$ 14            | \$ 24   | \$ 34   | \$ 38   | \$ 42  |
| 24,000         | \$ 20            | \$ 32   | \$ 44   | \$ 50   | \$ 56  |
| 30,000         | \$ 24            | \$ 40   | \$ 56   | \$ 64   | \$ 70  |
| 36,000         | \$ 28            | \$ 50   | \$ 68   | \$ 76   | \$ 84  |
| 42,000         | \$ 34            | \$ 58   | \$ 78   | \$ 88   | \$ 98  |
| 48,000         | \$ 38            | \$ 66   | \$ 90   | \$ 102  | \$ 112 |
| 60,000         | \$ 48            | \$ 82   | \$ 112  | \$ 126  | \$ 140 |



## **ATTACHMENT C – REQUIRED DOCUMENTATION**

Certain documentation must be submitted to be eligible for incentive payment. It is the responsibility of the participating Homebuilder to confirm that all pertinent documentation is submitted and in reasonable condition so that the Program implementers can verify the contents of the incentive request.

### *ALL INCENTIVE REQUESTS*

Must upload the following documentation to the Program database in support of the incentive request:

### *HVAC MIDSTREAM PATH REQUIRED DOCUMENTATION*

- Completed database entry for each equipment
- Upload the incentive claim form for each equipment
- Model, Serial Number and AHRI for each submitted HVAC system or heat pump
- All homes must meet the minimum energy code, the 2015 IECC, in addition to the Program requirements

## ATTACHMENT D – MILESTONES

Homebuilders are required to submit qualifying claims on a timely and regular basis to ensure that the Program meets its annual goals. The Program Manager will monitor each Homebuilder's progress in achieving the milestone requirements and may reallocate incentives if necessary.

Milestones for the 2019 Program are listed in Table 8 below.

Table 2: Program Milestones

| Activity/Submittal   | Date               |
|--|--------------------|
| First Milestone: 20 percent of goal to be completed  | April 30, 2019     |
| Second Milestone: 60 percent of goal to be completed   | June 28, 2019      |
| Third Milestone: 85 percent of goal to be completed  | September 30, 2019 |
| Final Milestone: 100 percent of goal to be completed; (All installations must be completed, all data uploaded on online reporting system, and all paperwork must be received by close of business day) | November 30, 2019  |
| Final Incentive Payments Made to Distributors  | December 2019      |

If a participating Homebuilder fails to meet a milestone, the Program may rebalance the distribution of incentives between participating dealers through a reallocation of funds to ensure that program objectives are met. If a Homebuilder has their allocation reduced as a result of low program participation, then the Homebuilder may recapture some or all of the funds reduced at the following milestone date if participation is increased.