

# Wholesale Midstream Heat Pump Water Heating Program

## Distributor Participation Agreement

This Wholesale Midstream Heat Pump Water Heater (HPWH) Program Distributor Participation Agreement (“Participation Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Program Implementer and Distributor, each of which are defined herein.

### 1. PROGRAM DESCRIPTION

- a. The Wholesale Midstream Heat Pump Water Heater (HPWH) Program (hereafter referred to as the “Program”) as part of the New York State Clean Heat Program, is an energy efficiency program sponsored by Niagara Mohawk Power Corporation d/b/a National Grid, hereafter referred to as the “Sponsor”. The Program is implemented on behalf of National Grid by Cohen Ventures, Inc., d/b/a Energy Solutions, (“Program Implementer”).
- b. The Program provides cash incentives, in the form of rebates, to eligible wholesale equipment Distributors, defined below, to influence stocking and encourage *upselling* (i.e., explaining the benefits of HPWH units to customers and Trade Professionals, defined below, and/or calculating the return on investment) of eligible air source HPWHs to residential, commercial & industrial (C&I), and multifamily electric customers of the Sponsor. Participating Distributors must pass a set portion of the incentive on to the installer to reduce the equipment cost for the Sponsor’s end-use customer. Further specifics of this process are laid out in the Incentive section of this document. The incentives will benefit Sponsors’ end-use customers in several ways, including but not limited to energy savings, cost reduction, installation of higher quality products, increased availability of high efficiency equipment, and education on high efficiency equipment.
- c. To participate in the Program, Distributor is required to sign this Participation Agreement and agree to the terms and conditions of participation set forth in this Participation Agreement.

### 2. DISTRIBUTOR INFORMATION

Please fill out the following contact information below – document must be complete to process.

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**Company Name (“Distributor”)** \_\_\_\_\_ **Website** \_\_\_\_\_

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**Federal Tax ID #** \_\_\_\_\_ **Tax Status** \_\_\_\_\_ **Number of**  
(Corporation, Partnership, Sole Proprietorship or Exempt) \_\_\_\_\_ **Participating Branch**  
\_\_\_\_\_ **Locations** \_\_\_\_\_

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**Corporate Address** \_\_\_\_\_ **City, State ZIP Code** \_\_\_\_\_

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**Pay-to-Name** (Name as it will appear on check) **Payee Contact**

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**Pay-to-Address** (if different from Corporate Address) **City, State ZIP Code**

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**Primary Branch Address** (if different from Corporate Address) **City, State ZIP Code**

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**Management Contact** **Title** **Phone** **Email**

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**Sales Contact** **Title** **Phone** **Email**

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**Processing Contact** **Title** **Phone** **Email**

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**Manufacturer(s) Represented**

### 3. PROGRAM CONTACT INFORMATION

If you have any questions or concerns about the Program, please contact the Program Implementer. If your matter is not resolved, the Program Implementer may refer you directly to the Sponsor or you may request that the matter be escalated to the Sponsor. Key contact information is provided below. The Sponsor and Implementer may designate a substitute contact during the Program.

Program Implementer	Jacob Lent	Energy Solutions	617-440-5470 x731	jlent@energy-solution.com
Sponsor	Jennifer Cross	National Grid - NY	518-433-5034	jennifer.cross@nationalgrid.com

### 4. DEFINITIONS & TERMS OF PARTICIPATION

- a. **Program Manual** refers to the New York State Clean Heat Program Manual, which documents the rules and specifications governing the Program. The Program Manual is made available at <https://saveenergy.ny.gov/NYScleanheat/>.
- b. **Participating Distributor**
  - i. "Participating Distributor" means an entity that purchases Eligible Equipment (as defined below) directly from the manufacturer for resale to contractors, electricians, builders, developers, building maintenance staff or services companies, and any other buyer servicing Eligible Customers (each an "Installer"). An Installer that purchases Eligible Equipment from a Participating Distributor does not qualify for enrollment in the Program as a Participating Distributor. Participating Distributors are required to

provide enrollment documents including but not limited to this Distributor Participation Agreement. The Program Implementer, at its sole discretion, reserves the right to review and approve or disapprove an organization as a Participating Distributor.

- ii. Under certain circumstances, a manufacturer may serve as its own Distributor. In this case, the manufacturer will be a Participating Distributor if it otherwise meets the requirements noted in the preceding paragraph. An entity that receives equipment for re-sale from the manufacturer's distribution facility and sells to Installers will be considered a Participating Distributor for such purposes, and such entity will qualify to participate in the Program.
- iii. In some cases, exceptions to the above definitions can be made in cases where another market actor is able to enroll and utilize the Program incentives to effectively influence the sale to include Eligible Equipment. These exceptions to the enrollment requirements will be made on a case-by-case basis with written approval from the Program Implementer and/or Program Sponsor.

**c. Eligible Customer**

- i. "Eligible Customer" means a residential, C&I, or multifamily customer who receives electric distribution service from the Sponsor. Sales of eligible equipment must be installed at a customer facility or residence. For Eligible Equipment intended to save electricity, the account must be for electric service.
- ii. It is the Participating Distributor's responsibility to supply accurate and adequate customer information to the Online Incentive Platform (as defined below), including but not limited to the correct street address of the facility where the Eligible Equipment is installed, Eligible Equipment sales date, and identification of a customer's facility as an Eligible Customer. Incorrect or insufficient information may result in rejection of the incentive for the equipment sold to that customer. Incorrect information could lead to termination from the Program.

**d. Eligible Territory**

- i. "Eligible Territory" means the Sponsor's electric distribution service territory. A list of the zip codes constituting the Sponsor's electric distribution service territory is provided in Appendix A.

**e. Online Incentive Platform**

- i. The Program utilizes a paperless, online system for entering, processing, and tracking Incentive Applications (the "Online Incentive Platform"). The Online Incentive Platform is hosted at the following online site: [nyrebates.com](http://nyrebates.com). Upon enrollment in the Program, Program Implementer will provide the Participating Distributor with a unique log-in ID to the Online Incentive Platform and Program-supported training on the use of the Online Incentive Platform. Participating Distributor must request a unique log-in ID for each person that accesses the Online Incentive Platform. Participating Distributor must make specific log-in ID deactivation requests as appropriate. Additional log-in IDs may be requested by email by the Management, Sales, or Processing Contacts identified on this form.
- ii. Applications must be entered and submitted within 90 days of the sale date unless given pre-approval by the Program Implementer. Applications with a sale date of 90 days

after this agreement is executed are subject to pre-approval by Program Implementer. If you do not have access to the internet to submit your Application online, please contact the Program Implementer to make other arrangements for Application submission.

f. **Eligible Equipment**

- i. “Eligible Equipment” means equipment that is listed in the Program Manual at <https://saveenergy.ny.gov/NYScleanheat/>. Eligible equipment may change periodically during the Program Term.

As of the date of this Agreement, Eligible Equipment is defined as new, air source HPWHs sold to an Eligible Customer and installed at an Eligible Customer’s facility or residence in the Eligible Territory within the defined dates of the Program Term (as defined below).

- ii. Program Measures, as set forth in the Program Manual (at Table 1 “Incentive Structure and Eligibility Criteria” and in section 3 “Eligibility and Requirements), define categories of Eligible Equipment that each have specific equipment specifications and available per unit incentive values. Eligible Equipment must meet or exceed requirements for Program Measures. Incentives for any given Program Measure may vary depending on the type of equipment, the time of sale and date submitted. Incentives and Eligible Equipment as well as the equipment specification and minimum eligible efficiencies will be provided on the Online Incentive Platform. Program Measures may be modified over time and only be eligible within specific date ranges.
- iii. In order to be listed as Eligible Equipment, equipment must be found in the Eligibility and Requirements section contained in the Program Manual. System eligibility includes:
- ENERGY STAR®
- iv. The Sponsor may, in its sole discretion, add or remove organizations or sourcing protocols from the Source Product List and equipment specifications as deemed appropriate during the Program. If differences exist between equipment specification data found in Source Product Lists and supply chain marketing materials, the data in the Source Product List will control.

g. **Eligible Installation**

An “Eligible Installation” is defined as the installation of the Eligible Equipment at the Eligible Customer’s facility or residence in the Eligible Territory during the Program Term. An Eligible Installation includes replacement equipment (retrofit) installations or new equipment installations. For any given Eligible Installation, Eligible Equipment refers to a specific make and model pair. A given project may have multiple Eligible Installations with each being evaluated independent from any other incentive claims.

h. **Incentives**

- i. “Incentive” means the payment or payments by the Program Implementer to a Participating Distributor for Eligible Equipment sold and installed according to the terms and conditions of this Participation Agreement and the Program Manual. Eligible Equipment must be sold by the Participating Distributor during the Program Term, but

may be installed after the end of the Program Term. Incentive amounts for specific Program Measures are as set forth in the Program Manual and may be changed or updated by Sponsor and Implementer throughout the Program Term. At no point will Incentive Payments exceed the line-item equipment cost. Line-item equipment cost is established by the per unit cost of the equipment and the quantity sold with a prorated amount of the attributed tax and shipping and handling fees.

- ii. **The Participating Distributor *must* pass through a specified portion of the incentive to the Installers either as a point-of-sale discount or as a credit** to be issued to the installer once the Participating Distributor receives the incentive payment from the Program Implementer. The current incentive amounts are specified below; incentive levels are subject to change in the sole discretion of Sponsor and Program Implementer during the Program Term.

**Incentive amounts as of the date of this agreement are:**

**\$50 to be retained by Participating Distributor**

**\$50 to be passed on to Installers**

**\$700 to be passed on to Customer**

- iii. **It is the Participating Distributor’s responsibility to ensure the Installer is aware of the Program requirement to further pass on the remaining portion of the incentive to the Sponsor’s end use customer.**
- i. **Program Term.** The term of the Program (the “Program Term”) is September 1<sup>st</sup>, 2022, through December 31<sup>st</sup>, 2023, but may be terminated or extended at any time by the Sponsor. Participating Distributor shall be notified of any such termination or extension of the Program. If the Program Term is extended, the terms of this Participation Agreement shall continue to apply for the duration of the extended Program Term unless otherwise modified in writing by the Sponsor or Program Implementer.
- j. **Changes to Program.** The Sponsor may in its sole discretion, make changes to the Program at any time, including without limitation modifying the Incentive amounts and adding or removing Eligible Equipment from the Program. The Program Implementer will provide at least ten (10) days' prior written notice of such changes to Participating Distributors. Written notice will be provided in email format. Any changes will be reflected in the Program Manual - it is housed at: <https://saveenergy.ny.gov/NYScleanheat/>.
- k. **Participating Distributor Suspension.** The Sponsor may, in its sole discretion, suspend a Participating Distributor from the Program and request a refund of Incentives paid to Participating Distributor. Grounds include, but are not limited to: (i) failure to provide required sales information, (ii) submission of incorrect or inaccurate information on Incentive Applications, (iii) failed installation verifications or equipment inspections, or (iv) material breach of the terms of this Participation Agreement. Participating Distributor may apply for reinstatement to the Program after ninety (90) calendar days from the date of suspension. During the suspension period, Sponsor reserves the right to disqualify all of the Participating Distributor’s Eligible Equipment sales from the Program from the date of suspension to the date of reinstatement.
- l. **Verification.**

- i. Installation of Eligible Equipment will be subject to verification by the Sponsor or its agents, including but not limited to the Program Implementer or a 3<sup>rd</sup> Party Organization. The Sponsor or its representative will randomly select a portion of Incentive Applications for field or a paper invoice verification. Verification will be performed per Sponsor requirements on all Eligible Equipment listed, or a select portion of the Eligible Equipment listed, on selected Incentive Applications. The Eligible Equipment must be verified to be new and installed at the Eligible Customer's facility in the Eligible Territory.
  - ii. The Sponsor will verify that the Eligible Equipment's model numbers as listed in the Incentive Application matches the equipment at the installation site. If the model or serial numbers found during field verification differ from what is listed in the Incentive Application, the Incentive Application may be rejected, and the Participating Distributor will have the opportunity to amend the Incentive Application with corrected information and resubmit the Incentive Application for reconsideration.
  - iii. The Participating Distributor is responsible for submitting accurate and exact Eligible Customer addresses. Incorrect addresses may result in rejection of all the Incentive Applications at that location. If construction or other project delays cause Eligible Equipment to not be installed at the Eligible Customer's facility prior to the time of field verification, the Sponsor will reject the Incentive Application and the Participating Distributor may resubmit the Incentive Application after the Participating Distributor has verified installation at the Eligible Customer's facility. Note that all resubmitted Incentive Applications are subject to any applicable time limits set forth herein.
- m. **Promotion Guidelines.** The following Promotion guidelines shall apply during the Program Term:
- i. Participating Distributor, may and is encouraged to, print and display Program Implementer-provided promotional materials at point of purchase locations.
  - ii. Participating Distributor may add the following language to its webpage: "A proud participant of The New York State Clean Heat Program", upon review and approval from Sponsor and Program Implementer.
  - iii. Participating Distributors may use the words "New York State Clean Heat Program" in promotional materials or advertisements, upon review and approval from Sponsor and Program Implementer.
  - iv. Participating Distributors may use the name "National Grid" in a text format to describe the Program but may not use the "National Grid" logo without prior written permission.
  - v. Participating Distributors shall not misrepresent the nature of their role in the Program. Participating Distributor shall not state or imply to customers, or anyone else, that the Participating Distributor is employed by or working on Sponsor's behalf. Sponsor is vendor neutral and does not endorse products, services, or companies.
  - vi. Participating Distributors agree to be listed as a Participating Distributor on Program websites and other materials as determined by the Program Implementer or Sponsor unless requested otherwise in writing.

## 5. INCENTIVE APPLICATION PROCESSING, TERMS & PAYMENT

### a. **Applying for a Program Incentive.**

- i. To receive the Incentives, Participating Distributors must upload required sales and installation information to the Online Incentive Platform (“Incentive Application”). Additional information regarding the information required to submit an Incentive Application are listed in the Program Manual and may be amended from time to time. As of the date of this agreement, following installation, Eligible Equipment, and sales information are required to complete an Incentive Application:

Eligible Equipment Information:

- a. Manufacturer
- b. Model Number(s)
- c. # of Units Installed
- d. Serial Number(s)

Installation Site Information:

- a. Installation Date
- b. Customer Address (where the Eligible Equipment is installed)
- c. Existing Water Heating Fuel Type
- d. Installation Type (Retrofit or New Construction)
- e. Building Type

Sales Information:

- a. Sales Invoice Number
- b. Sales Date
- c. Contractor Company Name
- d. Contractor Contact Name
- e. Contractor Phone

- ii. Upon request by Participating Distributor, Program Implementer may, at its sole discretion, allow Participating Distributor to provide the above information to Program Implementer, and Program Implementer may submit the Incentive Application to the Instant Incentive System on behalf of the Participating Distributor. Notwithstanding the foregoing, any such Incentive Application shall be deemed submitted by Participating Distributor for all purposes. The Participating Distributor shall be responsible for supplying accurate and complete information when submitting Incentive Applications either to the Program Implementer or via the Online Incentive Platform. Insufficient information may result in rejection of the Incentive Application.
- iii. In no event shall Program Implementer be responsible or liable, and Participating Distributor retains and assumes all liability, for (i) any Incentive Application that is not submitted in a timely manner, that is incomplete or that contains any inaccurate information, or that otherwise fails to meet Program eligibility criteria and is not approved; (ii) maintaining the confidentiality of Participating Distributor account passwords and any other private, confidential information provided by Participating Distributor to Program Implementer; or (iii) cooperation with verification activities such as providing supporting documentation to Program Implementer. Participating Distributor understands and agrees that there is no guarantee that any Incentive Application submitted by Program Implementer on behalf of Participating Distributor will be approved or that Participating Distributor will receive an Incentive payment therefor under this Program.

- b. **Refunds and Adjustments.** Sponsor is entitled to a prompt refund from Participating Distributor of any and all Incentives paid to Participating Distributor if (i) Participating Distributor fails to comply with all material terms of this Participation Agreement, (ii) Participating Distributor submits inaccurate or incomplete Incentive Application information, or (iii) Eligible Equipment for which the Incentives have been paid is returned by the Qualifying Customer. Any refund of Incentives paid to Participating Distributor to which the Sponsor becomes entitled will be deducted and offset as an adjustment from Participating Distributor's future invoices. If the Sponsor cannot offset the refund, then upon request by the Sponsor, Participating Distributor shall promptly refund to the Sponsor the Incentive amounts.

## **6. TERMS AND CONDITIONS APPLICABLE TO INCENTIVE APPLICATIONS**

The following terms and conditions shall apply to every Incentive Application that Participating Distributor submits in connection with the Program.

- a. **Good Faith Statement.** The Participating Distributor certifies and warrants that all information on any Incentive Application submitted by Participating Distributor is submitted in good faith as true and correct in all material respects and that all the Eligible Equipment listed in any Incentive Application will be new and sold to an Eligible Customer who has installed or will install the Eligible Equipment at a residential, C&I, or multifamily facility or residence in the Qualifying Territory. The Participating Distributor will take all appropriate and reasonable internal administrative steps to maintain trained staff on the Program and avoid duplicate entries of Incentive Applications that may be created due to current paperwork processes, personal organization of assigned administrative support, and potentially fraudulent activity.

**Funding Limitations.** The Participating Distributor acknowledges and understands that the Program has a limited budget. Except for Eligible Equipment sold within the last 30 days of the Program Term, Incentive Applications will be accepted on a first-come, first-served basis until the Program Term has ended or until allocated funds are exhausted. First-come, first-served status will be determined by the date and time the Incentive Application is submitted via the Online Incentive Platform.

- b. **No Double-Dipping.** Each Eligible Equipment is eligible for only one incentive or rebate payment, through either this Program or any other energy efficiency incentive Program offered by the Sponsor. For avoidance of doubt, if Participating Distributor receives Incentives for Eligible Equipment under this Program, such Eligible Equipment will not be eligible for an incentive or rebate payment under another program offered by a Sponsor. Incentive Applications will be compared for duplicate incentive payments across this, and other applicable programs offered by the Sponsor. Incentive Applications deemed to be duplicates will be rejected from this Program for "double-dipping". If "double-dipping" was determined within another applicable program application, that program's sponsoring utility and/or implementation vendor will be notified that the Incentive Application for this Program was rejected. Similarly, Incentive Applications reflecting the same install location as another in-process or approved application in this Program or any other applicable program will not be approved until double-dipping or any other appropriate verification is completed.

- c. **Warranty Disclaimer and Liability.** NEITHER THE SPONSOR NOR THE PROGRAM IMPLEMENTER ENDORSES, GUARANTEES, OR WARRANTS ANY MANUFACTURER, PARTICIPATING DISTRIBUTOR OR PRODUCT. NEITHER THE SPONSOR NOR THE PROGRAM IMPLEMENTER MAKES ANY WARRANTIES OR



GUARANTEES IN CONNECTION WITH THE PROGRAM, ANY PROJECT, OR ANY ITEM OR SERVICES PERFORMED IN CONNECTION HEREWITH OR THEREWITH, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER THE SPONSOR NOR THE PROGRAM IMPLEMENTER SHALL HAVE ANY RESPONSIBILITY OR LIABILITY TO THE PARTICIPATING DISTRIBUTOR, ITS EMPLOYEES, ITS AGENTS OR ANY THIRD PARTIES IN CONNECTION WITH THE PROGRAM OR OTHERWISE. THE PARTICIPATING DISTRIBUTOR ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE PROGRAM AND IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING ITEMS INCORPORATED IN THE PROGRAM (“THIRD PARTY WARRANTIES”) ARE NOT TO BE CONSIDERED WARRANTIES OF EITHER THE SPONSOR OR THE PROGRAM IMPLEMENTER AND NEITHER MAKES ANY REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES. THIS DISCLAIMER SHALL SURVIVE ANY CANCELLATION, COMPLETION, TERMINATION OR EXPIRATION OF PARTICIPATING DISTRIBUTOR’S PARTICIPATION IN THE PROGRAM.

- d. **Indemnification.** Participating Distributor agrees to defend, indemnify and hold harmless the Sponsor and the Program Implementer and respective affiliates, officers, directors, employees, regional representatives, agents, successors or assigns (each an "Indemnified Party") from and against any and all claims, demands, liabilities, losses, or causes of action (including, without limitation, court costs and reasonable attorney’s fees) (collectively, "Damages") brought by or for third parties (“Claims”) which arise out of or are connected with this Participation Agreement, including the Participating Distributor’s participation in the Program. The foregoing indemnification obligation will not apply to the extent such Claims are caused by the negligence of the Indemnified Party.
- e. **Disclaimer of Liability.**
- i. To the extent permitted by law, Sponsor and Program Implementer shall have no liability, and Participating Distributor covenants not to sue either of Sponsor or Program Implementer, for anything relating to or arising out of Participating Distributor's in connection with this Participation Agreement or in participation in the Program. Participating Distributor therefore releases Sponsor and Program Implementer from any liability arising out of this Participation Agreement and Participating Distributor's participation in the Program.
  - ii. With the exception of the Participating Distributor’s indemnity obligations hereunder, in no event shall a party be liable to another party for any consequential, incidental, punitive or indirect damages including lost profits, arising from or otherwise in connection with this Participation Agreement.
- f. **Regulatory and Governing Authority.** Participating Distributor understands and agrees that this Participation Agreement and the Program shall always be subject to changes or modifications by the New York State Public Service Commission (“NYPSC”) at its sole discretion. Participating Distributor understands and agrees that the NYPSC may at any time

commence an investigation or other regulatory proceeding in connection with the Program and/or this Participant Agreement. Participating Distributor agrees to cooperate fully with any such investigation or proceeding.

g. **Confidentiality.**

- i. Participating Distributor acknowledges and agrees that Sponsor and Program Implementer have no duty of confidentiality with respect to any information submitted by Participating Distributor pursuant to its participation in the Program and that Sponsor and Program Implementer may disclose such information to their agents and representatives, and to NYPSC and other governmental agencies and authorities, as required. This Program is subject to oversight by the NYPSC, which may wish to review any Program data that Sponsor and Program Implementer receives. Neither Sponsor nor Program Implementer will have any liability to Participating Distributor or any other party as result of any public disclosure of any data or other materials submitted by Participating Distributor pursuant to the Program.
- ii. Any data and information provided by Participating Distributor to Sponsor or Program Implementer as part of the Program may be used for the purpose of tracking and analyzing trends in sales of Eligible Equipment over the course of the Program, to evaluate the effectiveness of the Program, and to inform design and development of energy efficiency programs in New York State. The cumulative sales information of all Participating Distributors will be used to generate an overall report, which will act as the basis for determination of the Program's success. This report will be made available to the public. However, Sponsor and Program Implementer will make efforts to maintain as confidential any personally identifiable Customer Information and any unit pricing information or sales data specific to a Distributor.
- iii. **Participating Distributor's Collection and Use of Customer Information**  
Participating Distributor acknowledges that it will collect information in connection with the Program, including utility customers' address, and additional information regarding the home, and equipment installed ("Customer Information"). Participating Distributor agrees to take appropriate measures, including but not limited to physical, technical and security measures to ensure the protection of the Customer Information such that the information remains secure and confidential at all times, and is not accessed by or disclosed to any third parties. Participating Distributor will collect only the Customer's service address (the address at which the equipment was installed) in addition to other technical information regarding the equipment and installing Contractor as specified by Sponsor and Implementer. Participating Distributor will not collect, access, handle, store, distribute, use or otherwise possess customer names, account numbers, email addresses, telephone numbers, or utility account numbers for the purposes of this program.

Distributor will not receive Customer Information from National Grid Sponsor or Implementer unless authorized by Customer and subject to terms of this Participation Agreement.

Distributor may only use information obtained from Sponsor, Contractors or Customer in connection with the Program for purposes of carrying out the Program and may not use it for any other purpose.

Customer lists: In no case may customer lists be communicated or disclosed to any third party, or used for any other purpose.

Distributor will comply with any and all applicable state and/or federal data privacy and security laws and regulations applicable to any information received from or on behalf of Sponsor or collected in connection with the Program, and in all communications with customers.

Contractor further agrees to implement specified measures for the protection of Customer Information as reasonably required by Sponsor or Implementer.

- h. **Preservation of Records.** The Participating Distributor shall preserve all records of sales of Eligible Equipment for which an Incentive was received from Program Implementer under this Program for a period of four years after termination of the Program or this Participation Agreement, whichever is later. Program Implementer's duly authorized representatives shall have the right to inspect and to reproduce any such accounts and records related to the Program including without limitation, records of equipment purchases, sales, or Incentives received. All of Participating Distributor's financial statements, reports, records, and other documents shall properly reflect the true facts about all activities and transactions for which the Participating Distributor received an Incentive as a Program participant.
- i. **Tax Liability.** Program Implementer will report Incentives paid to Participating Distributor as income to Participating Distributor on IRS Form 1099 unless Participating Distributor has indicated tax-exempt status on page 1 of this Participation Agreement. Participating Distributor is advised to consult with a tax adviser, accountant, or legal counsel concerning the taxability of Incentives. Neither the Sponsor nor the Program Implementer is responsible for any taxes that may be imposed on Participating Distributor as a result of approval or receipt of Incentives under this Program or Participating Distributor's participation in the Program.
- j. **Anti-Harassment and Non-Discrimination.** Participating Distributor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicants for employment. Unlawful conduct includes discrimination or harassment on the basis of sex, sexual orientation, gender and gender identity, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age (over 40), or marital status, or denial of family care leave, as defined by applicable law. Participating Distributor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Participating Distributor shall not discriminate, harass, or allow harassment against any Program contact on the basis of sex, gender and gender identity, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age (over 40), or marital status.
- k. **Notices.** Any written notice, demand or request required or authorized in connection with this Participation Agreement, shall be deemed properly given if delivered in person, sent electronically via email or fax, and/or transported by a nationally recognized overnight courier or first-class mail, postage prepaid to the addresses specified below, or to other addresses specified in writing by Sponsor or Program Implementer. An originally executed version of this Participation Agreement if delivered electronically by one party to the other party as evidence of signature shall, for all purposes hereof, be deemed an original. When any of the above methods of execution of this Participation Agreement is utilized in accordance with the terms set forth in this Section then neither party shall have the right to object to the

manner in which this Participation Agreement was executed as a defense to the enforcement of this Participation Agreement.

- l. **Energy Benefits.** In accepting the Incentives, Participating Distributor agrees that other than the energy cost savings realized by the Eligible Customer, the Sponsor is entitled to 100% of the energy benefits and rights associated with the Eligible Equipment, including without limitation, environmental credits under any regional initiative or federal, state, or local law, Program, or regulation.
- m. **Survival.** Sections of this Participation Agreement, as well as any provision that, in order to give proper effect to its intent, should survive the expiration or termination of this Agreement, will survive such expiration or termination of the Participation Agreement including Sections 6(c), 6(d), 6(e), 6(g), and 6(n)(iii).
- n. **General Contract Terms.**
  - i. **Entire Agreement.** This Participation Agreement constitutes the entire agreement between the Participating Distributor, Program Implementer and Sponsor with respect to Participating Distributor's participation in the Program and supersedes all previous proposals, both oral and written, representations, commitments, writings and all other communications from the Sponsor or the Program Implementer with respect to the Program. In the event of a conflict between this Participation Agreement and any other communications, whether made in the past, present or future, made by or on behalf of the Sponsor or the Program Implementer, the terms of this Participation Agreement shall control.
  - ii. **Amendment.** The parties may not amend this Participation Agreement except by written instrument signed by the parties.
  - iii. **Governing Law.** This Participation Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of New York without regard to any conflicts of laws rule that would apply the laws of another jurisdiction. This Participation Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of New York without regard to any conflicts of laws rule that would apply the laws of another jurisdiction.
  - iv. **No Waiver.** Failure by a party to exercise, or any delay on the part of a party in exercising, any right, remedy, power or privilege under this Participation Agreement shall not operate as a waiver of any such right, remedy, power or privilege. No single or partial exercise of any right, remedy, power or privilege hereunder shall preclude any other or further exercise of the same or of any other right, remedy, power or privilege.
  - v. **Assignment.** Neither party may directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under this Participation Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not such party is the surviving entity), operation of law, or any other manner, without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void.
  - vi. **No Third-Party Beneficiaries.** This Participation Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Except for the parties, their successors and permitted assigns, there are no third-party beneficiaries under this Participation Agreement.

## 7. PROGRAM PARTICIPATION ACTIVATION

Participating Distributor has read, understands and agrees to be bound by this Participation Agreement and has caused this Participation Agreement to be executed by its duly authorized representative.

Authorized Distributor Signature	
Print Name	
Title	
Date	

*Complete Page 1 and 2 in the Distributor Information section and fill out the lines above with name, signature, and date. Please make a copy of this Participation Agreement for your records, and then submit the original signed and initialed document*

*By email at:*

[heat-ne@energy-solution.com](mailto:heat-ne@energy-solution.com)

*Or by mail:*

**Energy Solutions**

**Attention: Jacob Lent**

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