
Clean Heat Connect Discounts and Rewards Program Addendum

Program Overview

Some of the resources provided through the Clean Heat Connect Network include providing small discounts or rewards for upgrading tools used in heat pump installation to reduce product failures as a result of poor installation practices when using cheaper tools. This addendum to the existing participation agreement allows for Clean Heat Connect Members to participate as vendors to NYSERDA to provide the discounts.

NYSERDA's contractor, TRC, will provide assistance to participants to answer questions about the process through assigned liaisons for each participating Clean Heat Connect Member. Participation in the vendor program is entirely voluntary and not a requirement for membership in Clean Heat Connect.

Discounts and Rewards Program Eligibility Requirements

There are four eligibility requirements that Retailers and HVAC Distributors must meet to receive financial incentives through Clean Heat Connect:

1. Maintain current membership in the NYSERDA Clean Heat Connect Network and complete, sign, and return the Discounts and Rewards Program Addendum in this document (pages 3-4).
2. Participants providing discounts or rewards must be located in OR provide significant service within the New York State Systems Benefits Charge (SBC) Territory¹.
3. Participants must follow the guidelines as established in the Clean Heat Connect Program Manual, Discounts and Rewards section for reporting any required voucher redemption, stocking requirements or other specifics of the program.
4. This Agreement may be terminated by either party at any time during the term of the Agreement, upon 30 days prior written notice to the other party.

¹ The SBC Territory is comprised of the following service territories: Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. The New York electric distribution customers of each of these electric distribution companies pay into the SBC and Clean Energy Funds through a surcharge on their utility bill.

Discounts and Rewards Program Participant Criteria

Participants agree to promote and sell the products for which discount vouchers are made available through NYSERDA's implementation Contractor, TRC.

Participants agree to:

- 1) Submit an accurate monthly voucher reporting data each month for the duration of the Agreement, with the understanding that the data is used for the purpose invoicing for reimbursements and evaluating the program, and that it will be treated in accordance with NYSERDA's policies.
- 2) Follow program procedures outlined in the Clean Heat Connect Program Manual for conducting the program and invoicing for reimbursement.
- 3) If needed, allow review of supporting documentation by program representatives including NYSERDA's contractor upon request for verifying the accuracy of monthly voucher redemption and product sales.
- 4) Comply with all relevant Federal, State and Local consumer protection laws and rules, as well as local licensing laws.

The participant understands that failure to meet these requirements may make participants ineligible for monetary incentives through the Clean Heat Connect Network.

NYSERDA will make reimbursement payments according to its Prompt Payment Policy Statement, included at the end of this document, providing payment within 30 days of receipt of a proper invoice.

The participant understands and agrees that:

- a) **No Benefits.** Participant agrees that if the personnel furnished by Participant are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, Participant acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. Participant agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.
- b) **Notification of Claims/Events.** Participant expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Participant and/or Participant's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Participant expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon Participant's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

Clean Heat Connect Discounts and Rewards Program Addendum

THE AGREEMENT WILL REMAIN VALID FOR THE DURATION OF THIS LIMITED TERM AGREEMENT BETWEEN NYSERDA AND THE PARTICIPANT, unless and until the Agreement is terminated in writing by either party in accordance with the Termination Clause below, or unless and until NYSERDA changes the terms and conditions of the Agreement, in which case NYSERDA will issue a new Agreement to the Participant for consideration and signature.

TERMINATION

This Limited Term Agreement may be terminated by either party at any time during the term of the Agreement, upon 30 days prior written notice to the other party.

PROGRAM CHANGES

NYSERDA reserves the right to make changes upon notice to the Participant. Programmatic changes announced through Program announcements will supersede policies and procedures in this Agreement and the applicable Program Manual(s). Such notifications shall be communicated via email and posted in accordance with the applicable Program Manual(s). It is the Participating Contractor's responsibility to ensure the appropriate Program contact's email address is on file with NYSERDA in the event of staff changes or responsibility changes.

REPAYMENT OR RECAPTURE OF PROGRAM INCENTIVES

The Participating Contractor acknowledges if NYSERDA determines a Participating Contractor has not strictly adhered to the terms and conditions of the Program for a project, any Program Incentives paid to the Customer and/or Participating Contractor on the project, shall be repaid to, or recaptured by, the Program from the Participating Contractor.

Upon notice from NYSERDA, the Participating Contractor shall provide NYSERDA direct payment within 30 days for the identified outstanding value of any Program Incentives paid on Projects that do not comply with Program terms, conditions, policies, or procedures identified in this Agreement, the applicable Program Manual(s), or Program Announcements. Failure to repay funds owed to NYSERDA may result in referral of the matter to the Attorney General's Office.

RELATIONSHIP OF THE PARTIES

It is understood and agreed that the personnel furnished by the Participating Contractor to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be the Participating Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of the Participating Contractor, except to the extent required by Section 414(n) of the Internal Revenue Code.

The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation, or other relationship between NYSERDA and the Participating Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage, or indemnification. Neither party shall have the right, power, or authority to obligate or bind the other in any manner not specified in this Agreement.

INDEMNIFICATION

The Participating Contractor shall protect, indemnify and hold harmless NYSERDA, its Implementation Contractors, and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York, resulting from, arising out of or relating to Participating Contractor's or its Subcontractor's performance of this Agreement, including, but not limited to, any claim or suit resulting from or related to mildew, fungus, moisture intrusion, or mold of every type and nature. The obligations of the Participating Contractor under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

I have read and agree to the terms and conditions in the NYSERDA Clean Heat Connect Discounts and Rewards Program Addendum (effective).

Accepted and Agreed to:

Qualified Signature: _____ Date: _____
Print Name: _____ Title: _____
Distributor Name: _____
Address Line 1: _____
Address Line 2: _____
City: _____ Zip Code: _____
County: _____ Electric Utility: _____
Phone Number: _____ Fax Number: _____
E-mail Address: _____
Web Site Address: _____
Tax ID #: _____

Complete this form and return to your account representative or mail to:

TRC Energy Services
Attn: Matt Christie
21 Griffin Road, North Windsor, CT 06095

NYSERDA Signature: _____ Date: _____

NYSERDA reserves the right, for any reason, to stop approving voucher applications at any time without notice. **Incomplete forms submitted will delay the approval process.**

Please keep a copy for your files

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability.

(a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations. (This is only a summary; the full text of Part 504 can be accessed at: (<http://www.nyserdera.ny.gov/About/New-York-State-Regulations.aspx>))

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

504.2. Definitions. Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined. (2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

504.3. Prompt Payment Schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

504.5. Exceptions and Extension of Payment Due Date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

504.7. Sources of Funds to Pay Interest. Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

504.8. Incorporation of Prompt Payment Policy Statement into Contracts. The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

504.10. Judicial Review. Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose