

# **BUSINESS INSTANT DISCOUNT PROGRAM**

## **MEMORANDUM OF UNDERSTANDING**

### **Promotion Description**

(herein referred to as “Distributor”) and Consumers Energy company (herein referred to as Consumers Energy) agree as of Dec. 16, 2020, (“Effective Date”) to enter this Memorandum of Understanding (“MOU”). Consumers Energy, through its Business Instant Discount Program (“Program”), reimburses distributors for Consumers Energy incentives delivered as a reduction in purchase price on the sale of approved products (“Products”) set forth on the Approved Products List (“APL”) through Distributor’s sales locations identified on Attachment A beginning on Dec. 16, 2020 and ending on Dec. 15, 2021 (“Program Term”). The term of this MOU shall run concurrently with the Program Term.

Distributors must comply with all requirements set forth in this MOU to be eligible to receive the Business Instant Discount Program incentive reimbursements.

### **Program Funding**

If there are no submittals for 90 days, the Distributor is subject to Program removal. In addition, Consumers Energy reserves the right, at its sole discretion, to terminate this MOU for any reason or no reason and to reallocate funding for the Program, as necessary. Consumers Energy will provide no less than fourteen (14) days written notice prior to termination. Consumers Energy agrees to pay the incentives as specified in the APL for qualified Products sold up to and including the date of MOU termination, if the Distributor submits requests for such incentives in accordance with the terms of this MOU.

### **Program Term**

The Program will terminate on the earliest of the following occurrences: (a) the end of the Program Term; (b) the depletion of the Program Allocated Funding; or (c) if terminated by Consumers Energy.

Consumers Energy will communicate Program Term changes to the Distributor in writing.

Consumers Energy retains the right to terminate the Program at its discretion. All authorized transactions will be honored and reimbursed if the funding has been applied for and approved.

Final transaction reports must be received by Consumers Energy on or before Dec. 21, 2021. Transaction reports received after Dec. 21, 2021 may not be processed for payment. Transactions must have date of sale indicating that the transaction occurred within the Program Term.

### **Program Marketing, Trademarks and Branding**

Except as expressly provided in this MOU, the Distributor is not allowed to use, under any circumstance, Consumers Energy trademarks to promote the Program without prior written approval from Consumers Energy. Failure of Consumers Energy to provide its written acceptance, as set forth herein, shall not constitute Consumers Energy approval and/or acceptance.

Distributor acknowledges and agrees that Consumers Energy is the lawful owner of all right, title and interest in and to Consumers Energy names and logos. Distributor agrees to take no action inconsistent with Consumers Energy ownership of its name and logo or that is likely to subject Consumers Energy to claims by third parties or potential loss of any rights therein. Consumers Energy hereby grants Distributor the right to use its name and logo in connection with the Program pursuant to the terms and conditions contained in this 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. Distributor acknowledges that maintaining a high standard of quality for the Program materials bearing the Consumers Energy name and logo and maintaining the goodwill associated with such names and logos are of substantial importance to Consumers Energy. Distributor therefore agrees that all materials to be used in connection with the Program shall be submitted for review and approved by Consumers Energy as set forth in this MOU.

### **Distributor Obligations and Requirements**

Distributor is not, and shall not represent itself to be, an agent of Consumers Energy.

Distributor must be an authorized distributor of all products discounted in the Program. All products submitted for reimbursement in the Program must be purchased directly from the manufacturer. Consumers Energy reserves the right to request supporting documentation verifying this business relationship (e.g. product purchase orders and manufacturer invoices).

Distributor must maintain a warehouse that stocks the products sold to the commercial, industrial or contractor market through the Program.

Distributor's primary source of revenue must be from the sale of products to commercial, industrial and contractor customers. A company whose primary source of revenue is the contracting of services is not eligible to participate as a Distributor in the Program. Consumers Energy reserves the right to request documentation confirming compliance.

Distributors whose sole purpose is to serve a single contractor are not eligible to participate in the Program.

Product sales to other Program distributors do not qualify for incentive reimbursement.

Distributor recognizes that the Program is intended to provide incentives on products sold to commercial and industrial customers with a Consumers Energy business account, or to a contractor installing products on behalf of those Consumers Energy business customers. Incentives delivered by Distributors on product sales to parties not meeting the above criteria, including residential, non-Consumers Energy customers, or contractors using the Products to serve non-eligible end users will not be reimbursed by Consumers Energy.

Distributor agrees to pass on 100% of the incentive dollars to the Consumers Energy business customer or contractor as defined above. Discounted products are not eligible for other rebates within the Consumers Energy Business Energy Efficiency Programs.

Consumers Energy reserves the right to require reimbursement for all incentives paid to Distributors found to have made such non-qualifying offers in the market in conjunction with the Program.

## **Utility Incentive Fulfillment Firms**

Utility incentive consolidation firms may participate, providing they are given authorization by an eligible Consumers Energy commercial or industrial customer; and they are given sole responsibility for incentive fulfillment by that Consumers Energy customer.

## **Program Evaluation Process**

In order to determine the impact and effectiveness of the Program, Distributor will be required to take part in an annual Program survey conducted by an evaluation firm named by Consumers Energy. Failure by Distributor to take part in this survey may result in the termination of this MOU by Consumers Energy.

Upon request, the Distributor must periodically provide specific customer information related to reported transactions in order to conduct Program impact assessments. This may include, but is not limited to, specific contact information for Consumers Energy customers or contractors related to reported transactions.

## **Limited Liability**

Consumers Energy's total liability under this MOU shall be limited to paying the promotional fees as set forth herein but only if and such promotional fees become due and payable pursuant to the terms and conditions set forth in this MOU and provided that Distributor has complied with all of the terms and conditions contained in this MOU.

## **Tax Liability**

Distributor is urged to consult their tax adviser concerning the taxability of incentives.

Consumers Energy is not responsible for any taxes that may be imposed on Distributor as a result of receipt of this incentive. Incentives may be taxable if greater than \$600 within one calendar year and will be reported as income to you on IRS Form 1099 unless you have checked "Corporation" or "Exempt" tax status above.

## **Indemnity**

Distributor shall indemnify, defend and save harmless Consumers Energy and their respective officers, directors, representatives, shareholders, employees, affiliates, agents and successors from and against any and all damages, losses, liabilities, claims, lawsuits and expenses (including reasonable attorney fees) arising out of or resulting from (i) Distributor's performance of its obligation under this MOU including actions or omissions of Distributors in connection with this MOU; (ii) failure of the product to comply with any and all warranties applicable to the Products; (iii) any and all claims based on product liability with respect to the Products, including but not limited to Product defects, deficiencies or nonconformities, Product design and manufacturing, or the storage and handling of the Products; or (iv) liability, claim, damage, cost, or expense (including reasonable attorney's fees) whether during or after the term of this MOU, arising out of or resulting from any actions alleging or determinations made that the Products infringe any issue patent or that any of the Products infringe any copyright, trade secret or any other intellectual property rights of any third party.

## Miscellaneous

This MOU embodies the entire agreement 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. This MOU shall be governed and construed in accordance with the laws of the State of Michigan. 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 shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

The relationship of the parties is that of independent contractors. None of the provisions of this 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 offices, members or employees, will be deemed to be the agent, employee or representative of the other parties.

The provisions contained in this MOU which by their nature of effect are required or intended to be observed, kept or performed after expiration or termination of 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.

No party shall be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of another party or its agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation 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.

Notwithstanding anything herein to the contrary, Consumers Energy reserves the right to reallocate funding for the Promotion and/or to terminate this MOU at any time. Consumers Energy will provide fourteen (14) days written notice prior taking such action.

Distributor non-compliance or breach of the terms and conditions identified herein may result in the following:

- First infraction: written warning.
- Second infraction: second written warning or three-month suspension from the Program, depending on severity.
- Third infraction: written notice of removal from the Program or year-long suspension.
- Notwithstanding the foregoing, Consumers Energy may immediately remove a Distributor from the program in the event of a severe non-compliance or breach of the terms of this MOU.

By signing the MOU, the distributing company also agrees to all program rules and requirements stated in the current Policies and Procedures Manual.

**MAIN CONTACTS FOR PROMOTION**

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

**Consumers Energy Company**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Distributor**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

