



**EmPower New York
Appliance Vendor Agreement For
Period from October 1, 2016 to December 31, 2018**

Appliance Vendor:
(hereinafter "Vendor")

Street Address:

City:

State:

Zip:

County:

Primary Contact:

Job Title:

Telephone Number:

Email Address:

Please check the regions in which the counties to be served are located:

- Capital Region** (Albany, Schenectady, Rensselaer, Columbia, Green, Warren, Washington, Hamilton, Saratoga County)
- Western** (Erie, Niagara, Chautauqua, Cattaraugus, Allegany County)
- North Country** (Jefferson, Lewis and St. Lawrence County)
- Adirondack** (Clinton, Essex, Franklin County)
- Mohawk** (Schoharie, Montgomery, Fulton, Herkimer County)
- NYC** (New York, Bronx, Queens, Kings, Richmond County)
- Finger Lakes** (Orleans, Genesee, Wyoming, Monroe, Livingston, Wayne, Ontario, Seneca, Yates County)
- Southern Tier** (Steuben, Schuylar, Tompkins, Chemung, Tioga, Delaware, Broome, Chenango, and Otsego County)
- Mid-Hudson** (Sullivan, Orange, Rockland, Ulster, Westchester, Putnam, Dutchess County)
- Central** (Oswego, Cayuga, Onondaga, Cortland, Oneida, Madison County)

The New York State Energy Research and Development Authority (NYSERDA) is offering EmPower New York through the New York Residential Existing Homes Program (hereinafter referred to as "the Program") to deliver energy efficiency and energy-use education to eligible households in New York State.

This Agreement sets out the terms and conditions under which Vendors may participate in the Program. Under this Agreement, Vendor agrees to accept referrals of income-eligible customers from NYSERDA's Program Implementer. NYSERDA agrees that it and its Program Implementer will provide program and technical support for participating Appliance Vendors.

The Program provides cost-effective electric reduction measures. Electric reduction measures include, but are not limited to, replacement of inefficient lighting with energy efficient lighting, replacement of refrigerators and freezers with more efficient

appliances, and cost-effective conversions of electric clothes dryers or water heaters to natural gas.

The Program also provides cost-effective Home Performance services. Home Performance services may include, but are not limited to, blower-door assisted air sealing, attic, sidewall and basement insulation, and the repair or replacement of heating systems.

This Agreement supersedes any previous agreement, is completely voluntary and can be terminated at any time for any reason by NYSERDA. In the event the Vendor wishes to terminate this Agreement, the Vendor must provide 30-days written notice to NYSERDA.

NYSERDA will make available the following services and support to Vendor:

- Referrals of customers for installation of energy saving appliances.
- Program support and training on service delivery, reporting, and payment procedures;
- Prompt payment for eligible services provided under the Program;
- Quality assurance and quality control with prompt feedback to the Vendor to ensure adherence to high standards of quality;
- Easy access to the Program Implementer, for prompt response to program issues.

The current pricing schedule of appliances and list of agreed-upon models are included as Attachment A. This schedule is subject to change based upon 30-days written notice from the Vendor.

By executing this Agreement, the Vendor agrees to play an active role in the Program by providing high-quality services to Program customers. As a condition of participating in the Program and accessing NYSERDA's benefits, Vendor agrees to the following:

1. Vendor must be able to conduct business successfully.

- A. Insurance Requirements: The Vendor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified below. All such insurance shall be evidenced by insurance policies, each of which shall:
- (a) Name or be endorsed to cover NYSERDA, the State of New York and the Vendor as additional insureds; and
 - (b) Provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof. The types and amounts of insurance required to be maintained under this Article are as follows:
 - (i) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum

limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster.

To be considered for participation in the Program, the Vendor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Participation Agreement thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Section will expire on a date prior to June 30, 2018, the Vendor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Vendor shall promptly pay all premiums thereon due.

Workers' Compensation: The Vendor shall maintain Workers' Compensation covering the obligations of the Vendor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits. The Vendor must provide proof of Worker's Compensation upon request by NYSERDA.

If a Vendor is identified as a Sole Proprietor, the Vendor must complete and submit form CE-200:

http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

In the event a Sole Proprietor gains employees during the Participation Agreement Period, the Participating Vendor shall notify the program and provide proof of Worker's Compensation within 10 days of the date of hire.

- B. Warranty Requirements: The Vendor shall provide the homeowner a written warranty of labor and materials valid for a minimum of one (1) year from the date the service is performed. Equipment installed shall carry the manufacturer's warranty, plus optional extended warranty coverage, if applicable. For measures installed not meeting Program requirements, as identified through a customer concern submission or QA inspection, the warranty will be extended one year once the Vendor has remediated all deficiencies to Program/manufacturer's standards.
- C. Technology Requirements: Vendor shall have a computer, with an operating system capable of running Excel, and shall be able to receive e-mails from NYSERDA and its program affiliates.
- D. Evaluation of Application: NYSERDA will evaluate the provided documentation prior to approving an Agreement. For both new applicants and returning

applicants, key evaluation criteria include, but are not limited to the following:

- (i) The Vendor's commitment to fair and ethical business practices as demonstrated through a review of resources including, but not limited to, the Better Business Bureau, NYS Department of Labor, and crowd-sourcing websites

For returning Vendors only, the past performance of the Vendor and/or certified individuals in the Program or other similar programs which may include but is not limited to:

- (i) Demonstration of the Vendor's ability to properly, and consistently, follow Program policies and procedures, and timely completion of work
- (ii) Satisfactory and professional interaction with Program Staff, homeowners, other contractors and Implementation Staff
- (iii) Satisfactory record of fair and ethical business practices
- (iv) Responsiveness to customer complaints, Implementation Contractor inquiries, and NYSERDA directives

2. Vendor shall properly respond to customer referrals by the Program Implementer

- A. Vendor shall accept referrals from the Program and shall provide services to such referral leads in accordance with the EmPower New York Guidelines and Procedures Manual and this Agreement.
- B. Vendor recognizes that the referrals received from the Program constitute a benefit from NYSERDA and that the Vendor must make every effort to pursue a referral in a timely fashion. If the Vendor fails to properly respond to a referral within 30 days, the referral may be made to another Appliance Vendor and future referrals may be affected. Vendor shall invoice for all work within 30 days of completion of the appliance delivery.
- C. Vendor shall adhere to pricing as outlined in Attachment A of this agreement.
- D. Vendor recognizes that NYSERDA may provide customer personal data and utility usage information to the Vendor, and that such personal information may only be used for the purposes of this agreement, and that such personal information must be treated as confidential and not disclosed to any party other than NYSERDA and the Program Implementer subject to applicable laws. The requirement for confidential treatment of customer information shall survive the termination of this Agreement.

3. Business Practices

- A. All refrigerators and freezers installed shall be brand new. All refrigerators and freezers installed must include:
 - a. Controls that are understandable and easy to use
 - b. Levelers on front legs.
 - c. Shelf adjustability.

- B. All refrigerators installed shall be ENERGY STAR® rated and must include:
 - a. Automatic defrost
 - b. Full shelf in freezer
 - c. Separate freezer control
- C. Deliveries must include complete installation into the home, including placement into the designated space and leveling of the new appliance. All refuse related to delivery, including appliance packing materials, must be removed at the time of installation.
- D. If the unit fails three times for the same problem that originates from the manufacturer and/or repair, the Vendor must replace the appliance at no cost to the customer.
- E. The Vendor must notify the Program Implementer immediately once they have been made aware of a manufacturing defect and assist in ensuring that the manufacturer fixes the defect BEFORE the unit fails as opposed to fixing the units as they fail.
- F. If a refrigerator or freezer fails due to manufacturing defects during the time of warranty, the Vendor must reimburse the customer for the cost of food spoilage due to the appliance failure.
- G. The Vendor must make sure that all units are operational before the delivery crew leaves the home.
- H. The Vendor must make repairs or provide financial compensation within 7 working days for any damage done to either the appliance or the home.
- I. If the customer has to wait more than three days for a repair part for an appliance provided by the Vendor and the appliance is inoperative, the Vendor must provide a loaner to the family.
- J. The Vendor must give the customer a reasonable time frame for delivery. A courtesy phone call must be made if they are running more than 1 hour past the scheduled delivery time.
- K. Vendor must maintain satisfactory and professional customer interaction, treat Program customers fairly, and shall provide timely completion of work and response to customer complaints and NYSERDA directives.
- L. Vendor shall properly represent the relationship of Vendor to the State of New York, NYSERDA, and NYSERDA's Program Implementer. Vendor is an independent contractor. Neither Vendor nor its employees shall represent themselves as employees of or certified by the State of New York, NYSERDA or NYSERDA's Program Implementer.
- M. The Vendor shall not represent that the services it provides, or the materials it uses, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- N. Vendor shall maintain any relevant licenses as required by federal, State, county or municipal governments or any other governmental agencies for work in the trades it undertakes through this Program.
- O. Vendor shall produce evidence of current licensing upon request by NYSERDA or its Program Implementer.
- P. It is the sole responsibility of the Vendor and its subcontractors to obtain and comply with the terms of any required permits for installing appliances through the Program.

The Vendor shall produce evidence of applicable permits upon request by NYSERDA or its Program Implementer.

- Q. A non-participating subcontractor of a Vendor shall not represent itself as a participant in the Program or as able to offer Program services and benefits, for the purpose of executing the sale of a non-Program project. Additionally, Vendor shall not permit any subcontractor to represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- R. Vendor shall provide all program customers with vendor contact information, manufacturer's appliance manual.
- S. Refrigerators and freezers shall carry a minimum one-year manufacturer's warranty on the entire box and a 5-year warranty on the sealed system. Damaged or defective items, in the opinion of the Implementation Contractor, shall be replaced at no cost (including shipping) to the Program
- T. Vendor shall remove old refrigerators and freezers from customer's home at the time of installation. The Vendor is responsible to legally dispose of all replaced refrigerators and freezers. All refrigerators and freezers must be dismantled to prevent reuse and parts must not be sold or distributed for reuse. Refrigerants, including but not limited to chlorofluorocarbons (CFC's), hydro chlorofluorocarbons (HCFC's), or 134A (HFC's), must be removed in accordance with Section 608 of the Clean Air Act and 40 CFR Part 82. Any capacitors or ballasts that may contain Polychlorinated-biphenyls (PCB's) must be removed and disposed in a manner consistent with federal, state, and local laws. All capacitors must be physically removed and examined. Any capacitor that clearly says "**NO PCBs**" can be disposed of in a manner consistent with generally accepted industry practices. If the words, "**NO PCBs**" do not appear on the label, the capacitor contains PCBs and must be incinerated by an EPA approved incineration site or put in a landfill that is permitted to legally handle PCBs. All refrigerators and freezers must be sent to a shredding or baling facility for final destruction and recycling of materials.
- U. Vendor will obtain from the customer a delivery receipt signed by the customer and identifying the make and model of the appliance installed, as well as the makes and models of appliances removed. It is expressly understood that NYSERDA and its Program Implementer will not approve payment for a job without a delivery slip, signed by the customer, identifying the make and model of the appliance(s) installed.
- V. Vendor is prohibited from providing service through EmPower to dwellings owned or occupied by vendor employees or business associates with an interest in the Vendor.
- W. If Vendor becomes involved in a dispute with a customer over business practices, Vendor shall work with the Program Implementer to resolve the dispute amicably.
- X. Indemnification. The Vendor shall protect, indemnify and hold harmless NYSERDA 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 Vendor's obligations under this Agreement. The obligations of the Vendor 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.

- Y. Vendor shall allow NYSERDA, its Program Implementer or Quality Assurance Contractor to conduct random field inspections of work that has been performed. Vendor recognizes NYSERDA's commitment to inspect at least 10% of all jobs performed by the Vendor under the Program.
- Z. Vendor, upon request of NYSERDA, Program Implementer, or Quality Assurance Contractor, and at no additional cost to the customer, shall make reasonable repairs or corrections as required. This provision survives termination of the Agreement.
- AA. Vendor shall maintain effective procedures for quality assurance, for resolution of customer complaints or disputes, and for response to customer emergencies. Vendor agrees to make these procedures available to NYSERDA or its Program Implementer for review and approval upon request.

4. Vendor recognizes that participation is at NYSERDA's discretion

- A. Vendor acknowledges that participation in the Program is voluntary, and NYSERDA or its Program Implementer may suspend or terminate Vendor's participation in the Program for any reason, including but not limited to, failure to maintain these standards, poor performance, or inappropriate conduct. In all cases involving termination of Vendor's participation, NYSERDA's written decision is final.
- B. Vendor shall not knowingly employ as a subcontractor any firm that has been suspended or terminated from this Program or any other NYSERDA program without NYSERDA's prior written permission.
- C. NYSERDA reserves the right to make changes to the Program upon written notice to the Vendor. Such notification shall be by e-mail and posting on NYSERDA's Partner Portal
<http://cmsapps.nyserda.ny.gov/PartnerPortal/EmPowerOverview.aspx>
- D. Vendor acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will jeopardize reimbursement for costs incurred under this Program.
- E. Vendor agrees to perform appliance replacement prior to invoicing NYSERDA for the service. In the event that billing discrepancies are identified for work already paid for, NYSERDA reserves the right to withhold comparable amounts of payments owed to the Vendor until the discrepancies are resolved. Billing for appliance installations which have not been completed may result in termination from the Program.
- F. If Vendor does not comply with program guidelines on a particular job, NYSERDA may not approve payment for that job.

5. Vendor shall agree to the following conditions:

- A. **Relationship of the Parties.** It is understood and agreed that the personnel furnished by the Vendor to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be Vendor'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 Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.
- a. 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 Vendor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, 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.
- B. **No Benefits.** Vendor agrees that if the personnel furnished by Vendor are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, Vendor 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. Vendor 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.
- C. **Notification of Claims/Events.** Vendor 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, Vendor and/or Vendor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Vendor 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 contractor'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.

6. Required Disclosures

- A. Using the space below, Vendor shall disclose whether it (any owner, member, principal, shareholder, officer, or employee) has been suspended or terminated from any of NYSERDA's programs during the past five (5) years. In addition, please provide a written explanation of the circumstances leading to such suspension or termination by attaching additional pages if necessary.

| Name | Program |
|-------|---------|
| _____ | _____ |
| _____ | _____ |

- B. Vendor shall disclose whether the company is a Minority or Woman Owned Business.

Is your company a Minority, Veteran or Woman Owned Business?
_____ Yes _____ No

APPLICANT CERTIFICATION

I certify, under the penalties of law that the statements made in this Agreement, and in supporting documentation provided along with this Agreement, have been examined by me and are true and complete and that I have the authority to sign on behalf of Vendor. I understand that by signing this Agreement, I consent to any other inquiry to verify or confirm the information I have given. I hereby authorize any reference identified or provided to NYSERDA by Vendor to release to NYSERDA any information pertaining to past or present relevant work. I hereby release from all liability or damage, NYSERDA and those persons, agencies or organizations who may furnish such information.

Signed:

Name of Vendor Company

Signature Date

Printed Name

Title