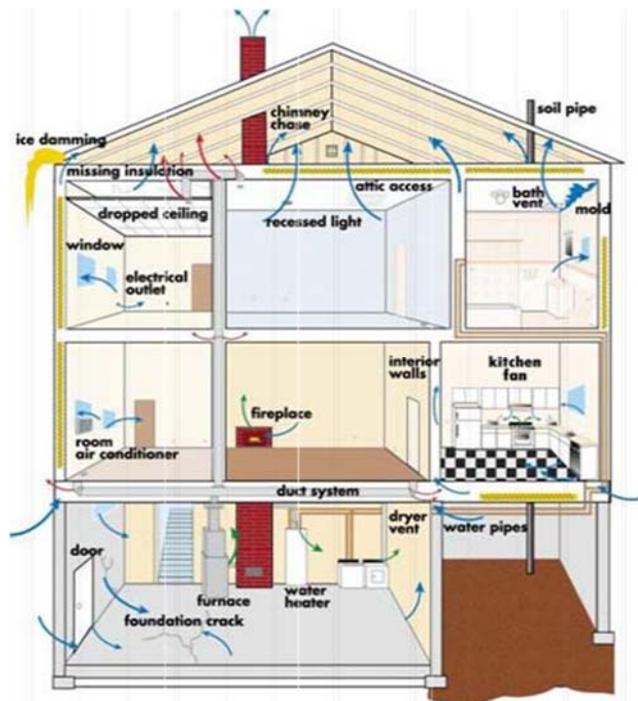




NYSERDA

2016-2018 NY Residential Existing Homes Program Contractor Participation Agreement



September 1, 2016 – December 31, 2018



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Article I. General Program Information

The New York State Energy Research and Development Authority (NYSERDA) administers the NY Residential Existing Homes Program, including a market rate component (currently called Home Performance with ENERGY STAR®), a moderate-income component (currently called Assisted Home Performance with ENERGY STAR), and a low-income component (currently called EmPower New York), collectively referred to as the “Program”, to improve the energy performance, durability, comfort and safety of existing one- to four-family homes throughout New York State. All three components of the Program meet the criteria of U.S. Department of Energy’s (DOE’s) Home Performance with ENERGY STAR program, and are administered in cooperation with DOE.

The objectives of the Program are to enhance the delivery of building performance services and use state-of-the-art diagnostic tools and building science principles to cost-effectively reduce energy consumption and costs, while simultaneously addressing health and safety issues pertaining to indoor air quality (focusing on carbon monoxide levels associated with combustion appliances), ventilation, and moisture control.

NYSERDA relies upon implementation contractors to provide technical and program support services and loan servicing and origination services. NYSERDA administers the Program in coordination with implementation, quality assurance, and financing contractors. Participating Contractors are independent contractors delivering building performance services to homeowners. NYSERDA offers assistance to both homeowners and Participating Contractors designed to increase awareness of, and demand for, building performance contracting while simultaneously establishing an infrastructure of trained and certified technicians and accredited contractors to deliver such services.

This Participation Agreement (“Agreement”) establishes the terms and conditions for all contractors to participate in the Program. Contractors providing services to low income customers (households with 60% or less of the State Median Income) must also read, sign and complete the Low-Income Addendum (“Addendum”) to the 2016-2018 NY Residential Existing Homes Program Contractor Participation Agreement. NYSERDA will review and approve the Agreements and Addendums separately and approval of the NY Residential Existing Homes Program Contractor Participation Agreement does not constitute approval of the Low-Income Addendum.

A contractor is considered and referred to as a “Participating Contractor” hereinafter, only when this Agreement is fully executed by NYSERDA.

Article II. Participation Requirements

Section 2.01 BPI GoldStar Contractor Status

The Participating Contractor shall obtain BPI GoldStar Contractor status prior to submitting an application to participate in the Program and shall maintain BPI GoldStar status throughout their participation in the Program. By entering into this Agreement, the Participating Contractor authorizes NYSERDA to share and obtain information with and from BPI for the purpose of verifying employee certifications, GoldStar status, insurance coverage and work quality. As a minimum requirement for Program participation, the Participating Contractor’s company must be

in good standing as a BPI Goldstar Contractor with at least one employee holding either the BPI Building Analyst or BPI Energy Auditor certification, and at least one employee with a specialty BPI certificate (e.g. Envelope, Heating, Air Conditioning and Heat Pump, or Manufactured Housing certification). These certifications may be held by the same individual.

Section 2.02 Certified Professionals

(a) Technical Standards

The Certified Professional(s) employed by a Participating Contractor shall ensure that work performed in the Program adheres to the technical standards established and maintained by BPI, or the credentialing organization, for each certification.

(b) Notice of Certified Professionals

The Participating Contractor shall provide NYSERDA written documentation that identifies each individual in the Contractor's business with a required certification. As an ongoing requirement, the Participating Contractor shall immediately inform the Program of any change to the list of certified professionals on staff.

(c) Additional Certifications for Specific Work

- (i) Heating:** Contractor staff installing heating systems and water heaters are strongly encouraged to have manufacturer's certifications for any units installed through the Program.
- (ii) Spray Foam Insulation:** Contractor staff installing spray foam insulation are strongly encouraged to participate in the SPFA Professional Certification Program for safe installation of spray foam.

Section 2.03 Service Territories

Participating Contractors may choose to serve specific market regions, counties, or a defined radius from their office. The Participating Contractor shall dedicate sufficient BPI Certified Professionals for each approved Program service territory. The Participating Contractor shall employ at least one BPI Certified professional per 50 mile radius.

The Participating Contractor shall only offer Program services in approved Program service territories listed on the fully executed Participation Agreement on file with NYSERDA. The Participating Contractor shall not offer or provide Program incentives in other territories where it does not have approval from NYSERDA. The Participating Contractor may submit a request to provide services to additional locations outside their approved Program service territories. The decision to allow a Participating Contractor to expand its Program service territory is at the sole discretion of NYSERDA.

Section 2.04 Licensing

It is the sole responsibility of the Participating Contractor and its sub-contractors to obtain and maintain any required federal, state, county, or municipal government licenses required for installing eligible measures through the Program, and to not perform work for which they are not licensed, if required. The Participating Contractor shall produce evidence of current licensing upon request by NYSERDA or its Program Implementers. Failure to comply with licensing requirements may result in disciplinary action.

Section 2.05 Permits

It is the sole responsibility of the Participating Contractor and its sub-contractors to obtain and comply with the terms of any required permits for installing Eligible Measures through the Program prior to the start of work. The Participating Contractor shall produce evidence of applicable permits upon request by NYSERDA or its Program Implementation Contractor. Failure to comply with permitting requirements may result in disciplinary action.

Section 2.06 Insurance

The Participating Contractor, 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 Contractor 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 Contractor 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 December 31, 2018, the Contractor, 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 Contractor shall promptly pay all premiums thereon due.

Section 2.07 Worker's Compensation

The Participating Contractor shall maintain Workers' Compensation covering the obligations of the Contractor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.

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

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

The Participating Contract must provide proof of Worker's Compensation upon request by NYSERDA.

Section 2.08 Warranty

The Participating Contractor 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. The Contractor must provide copies of all relevant warranties to the customer. For installed measures not meeting Program requirements, as identified through a customer concern submission or confirmed through a QA field inspection, the warranty shall, at the contractor's expense, be extended one year from the date the contractor completed remediation to Program/manufacturer's standards for all confirmed deficiencies.

Section 2.09 Customer Issue and Dispute Resolution

If a Participating Contractor, or its sub-contractor, becomes involved in a dispute with a Homeowner or customer over business practices, the Participating Contractor shall work to settle the dispute amicably utilizing the Participating Contractor's Customer Dispute Policy.

NYSERDA and its Program Implementation Contractors have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Participating Contractor shall hold NYSERDA and its Program Implementation Contractor harmless from any legal action arising from work associated with the Program. Failure to resolve customer issues in a timely manner may result in disciplinary action.

Section 2.10 Financing & Incentives

(a) Program Financing

The ability to provide access to NYSERDA-administered consumer financing options and incentives is reserved exclusively for the Participating Contractor. At no time may a non-participating sub-contractor of a Participating Contractor represent itself as having the ability to access Program financing or incentives.

The Participating Contractor shall ensure that the Program financing options and incentives are utilized only for the installation of those Eligible Measures and Accessories identified in the work scope submitted to and satisfactorily approved by the Program. Customers cannot receive incentives on a measure that is also receiving a utility incentive.

(b) Vendor Financing

In the event that the Participating Contractor wishes to offer third-party (other than NYSERDA) vendor financing to any homeowner, such offer must be made in accordance with all applicable New York State and federal laws, including, but not limited to, the New York State Banking Law and all applicable rules and regulations.

Article III. General Application Information

NYSERDA will execute an Agreement only when the applicant has submitted all required information. The decision to fully execute an Agreement is at the sole discretion of NYSERDA.

Section 3.01 Application Requirements

The Participating Contractor shall provide NYSERDA the information below when submitting the Agreement Application Signature Form, as requested by NYSERDA, or when there are changes or updates to the information previously provided.

- (a)** Completed Participation Agreement Application Signature Form: The Applicant must read, agree to the terms, and submit the completed Agreement Application Signature Form to NYSERDA. The Agreement Application Signature Form must be submitted by an individual with the full power and authority to enter into Agreements on behalf of the Company.
- (b)** Detail of company and staff experience in the energy efficiency sector. This is a requirement for new applicants or for returning applicants at NYSERDA's request.
 - (i)** A minimum of three references detailing completed energy efficiency projects within the past six months.
 - (ii)** Employee roster providing work experience, previous firms worked at and training
- (c)** Certificate of Insurance
- (d)** Dba form (if applicable)

Section 3.02 Evaluation Criteria for Contractor Acceptance

NYSERDA will evaluate the Agreement Application Signature Form and provided documentation prior to approving an Agreement.

- (a)** For both new applicants and returning applicants, key evaluation criteria include, but are not limited to the following:
 - (i)** An Onboarding Interview (may be waived for returning applicants, at NYSERDA's discretion)
 - (ii)** The applicant's commitment to fair and ethical business practices as demonstrated through references and review of other resources including, but not limited to, the Better Business Bureau, NYS Department of Labor, and crowd-sourcing websites
 - (iii)** A minimum of six months of documented energy efficiency business experience
 - (iv)** Documented experience with advanced building science methods, as demonstrated through including professional certifications, training certificates, awards and review of provided company information and information publically available
 - (v)** Documented prior relevant experience, such as references for completed projects, or participation in other NYSERDA programs or the Weatherization Assistance Program
 - (vi)** Documentation for other certifications (such as SPFA, NATE, NORA, manufacturer's installation certification). These certifications are optional, but may be submitted to NYSERDA as further documentation of related experience
- (b)** For returning applicants only, the past performance of the applicant and/or certified individuals in the Program or other similar programs which may include but is not limited to:
 - (i)** The quality of workmanship documented through the Program's Quality Assurance (QA) / Quality Control (QC) processes

- (ii) Demonstration of the applicant's ability to properly, and consistently, follow Program policies and procedures, including minimum production requirements
- (iii) Satisfactory and expedient resolution of non-conformances discovered during QA field inspection(s)
- (iv) Satisfactory and professional interaction with Program Staff, homeowners, other contractors and Implementation Staff
- (v) Satisfactory record of fair and ethical business practices
- (vi) Responsiveness to customer complaints, Implementation Contractor inquiries, and NYSERDA directives

Article IV. Agreement Terms

Section 4.01 Terms

Upon entering the Agreement, each Participating Contractor shall commit to promoting the Program and its mission of improving the energy performance, durability, comfort and safety of existing residential buildings, as defined by the Program.

The Contractor acknowledges this Agreement is completely voluntary. NYSERDA may deny participation, suspend or terminate a Participating Contractor's participation in the Program for any reason, including failure to maintain Program standards, poor performance, unresponsiveness or inappropriate behavior. In all cases involving a Contractor's participation status, NYSERDA's written decision is final.

Section 4.02 Participation

By executing this Agreement, the Participating Contractor agrees to be an active participant in the Program by providing high quality and professional building performance services to Program customers. As a condition for ongoing Program participation and associated benefits, each applicant and Participating Contractor understands and agrees to the terms and conditions outlined in this Agreement, the Contractor Resource Manual, and any Program Announcements distributed and/or posted by NYSERDA or the Program Implementation Contractor.

Section 4.03 Project Eligibility

The Program provides incentives to promote the installation of eligible energy efficiency measures designed to increase the energy efficiency of existing buildings; the Program does not offer financial incentives for projects that include additions, gut rehabilitation (i.e. demolition to bare walls), substantial renovations, the conversion of unconditioned space into conditioned living space, or for energy related improvements that are required by state or local building code.

Section 4.04 Enforcement

In all cases, or at any time, NYSERDA's failure to enforce any provisions of this Agreement shall not constitute a waiver of such provisions, nor does it limit NYSERDA's ability to enforce such provisions in the future.

Section 4.05 Program Changes

NYSERDA reserves the right to make changes to the Program upon notice to the Participating Contractor. Programmatic changes announced through Program Announcements will

supersede policies and procedures in this Agreement and the Contractor Resource Manual. Such notification shall be communicated via email and posting of the Program Announcement on the Partner Portal, www.nyserda.ny.gov/PartnerPortal and the NY HP Portal, <https://nyserda.energysavvy.com>.

Section 4.06 Post Termination Obligations

Articles VI through IX and Section 2.04 to 2.09 shall survive termination of this Agreement.

Article V. Program Support

Section 5.01 Program Support

Support services that NYSERDA will make available to the Participating Contractor include the following, which are fully detailed in the Contractor Resource Manual:

- (a) Financial incentives for contractors and consumers;
- (b) Access to Green Jobs – Green NY Residential Financing for customers;
- (c) The opportunity to respond to leads generated from NYSERDA’s public awareness campaigns and the residential program’s website;
- (d) Use of approved NYSERDA marketing materials that can be customized to include the Participating Contractor’s logo and other company information;
- (e) Third-party Quality Assurance;
- (f) Technical assistance;
- (g) Opportunities to participate in other NYSERDA pilot initiatives (i.e., programs, studies) as needs arise;
- (h) Access to the web-based Portal for project submission and tracking and program communication; and
- (i) Prompt payment for eligible incentives.

Article VI. Consumer Relations

Section 6.01 Consumer Inquiries

Participating Contractors shall promptly and appropriately respond to inquiries referred to the Participating Contractors by NYSERDA or the Program Implementers.

Section 6.02 Consumer Referrals

Participating Contractors shall accept referrals from the Program and shall make every reasonable effort to encourage homeowners to participate in the Program and, when providing Program services to these referral leads, do so in accordance with the Program guidelines, this Agreement and the contents of the Contractor Resource Manual. Participating Contractors found to be actively discouraging homeowners from participating in the Program, including options for free or partially-incentivized services for low income customers through alternative contractors, will be subject to the disciplinary measures detailed in Section 10.02 of this document.

Section 6.03 Timely Communication

Participating Contractors shall ensure prompt and accurate reporting of audit and project completions to the homeowner and the Program. Participating Contractors shall respond to

inquiries from homeowners, Program Staff, and Program Implementation Staff in a prompt, professional, and courteous manner.

Article VII. Business Practices

The Participating Contractor is expected to be an ambassador for the Program and any conduct contrary will result in disciplinary action. Participating Contractors shall remain in full compliance with the following Program requirements:

Section 7.01 Contract Compliance

It is the sole responsibility of the Participating Contractor to ensure that all contracts and subcontracts submitted to the Program by the Participating Contractor are written in full compliance with the General Business Law, Article 36-A “HOME IMPROVEMENT CONTRACTS” and any other applicable statutory or regulatory provisions. Contracts and other documents submitted by the contractor must be clear and legible, and include line item detail for each installed measure, including nameplate and efficiency information. The measured square footage of all areas to be insulated and lineal footage for all air sealing should be clearly identified. Pricing and quantities for each measure should be clearly identified. Any changes to the contract should be identified in a field change order and signed by the homeowner.

The Participating Contractor shall provide additional details requested regarding contractual terms and costs, for the purposes of project review, upon request.

Section 7.02 Professional Conduct

The Participating Contractor shall comply with all Program guidelines, treat all customers fairly, provide accurate information on all available Program incentives and financing and deliver promised services in a timely, competent, professional, and reasonable manner.

Section 7.03 Professional Courtesy

Participating Contractors shall conduct themselves in a professional, respectful, and reasonable manner when interacting with NYSERDA staff, Program Implementation Contractors and the QA designee. Participating Contractors shall not engage in behavior that adversely impacts NYSERDA, or other Participating Contractors, tarnishes NYSERDA’s service marks, and/or diminishes the profession or service in the eyes of the public.

Section 7.04 Program Representations

The Participating Contractor shall not engage in unfair or inaccurate representations of NYSERDA, the Program, the Program Implementation Contractors, QA designee, NYSERDA Constituency Based Organizations (CBOs), Community Partners, or Program affiliates.

(a) Participating Contractor

The Participating Contractor shall properly and accurately represent the relationship of the Participating Contractor and its sub-contractor(s) to the State of New York, NYSERDA, and NYSERDA’s Program Implementation Contractors. This relationship shall be that the Participating Contractor is a currently active BPI GoldStar Contractor, acts as independent contractor, and voluntarily participates in NYSERDA’s Program. The Participating Contractor shall not represent itself as working for, approved by, or certified by, the State of New York, NYSERDA or NYSERDA’s Program Implementation

Contractors. The Participating Contractor shall not represent that the services they provide, or the materials they use, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Program Implementation Contractors.

(b) Participating Sub-Contractor

NYSERDA strongly encourages the use of Participating Contractors for sub-contracted work to ensure the installed work meets Program Standards. Participating Contractors acting as a sub-contractor are expected to perform the work in a manner consistent with Program procedures and policy. Any deficiencies identified in sub-contracted work, regardless of the Program participation status of the sub-contractor, are expected to be resolved by the primary Participating Contractor in a timely manner through either the stated sub-contractor, alternative sub-contractor or directly. Any contractor serving as a sub-contractor while also approved as a Participating Contractor may also be subject to disciplinary action should the subcontracted work not comply with BPI and Program standards.

(c) Non-Participating Sub-Contractor

A non-participating sub-contractor of a Participating Contractor 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, any sub-contractor of a Participating Contractor shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementation Contractors.

Section 7.05 Proper Use of Program Marketing Material

(a) Required Program Material

To ensure the homeowner is educated on the features and benefits of the Program and able to make informed decisions, the Participating Contractor shall distribute required customer and Program information materials to the homeowner prior to contracting for Program related measures. Required Program materials are provided in the Contractor Resource Manual. It is expected that Participating Contractors will provide the homeowner with information regarding specific measures that require routine maintenance, such as high efficiency heating equipment, to ensure the customer is aware of potential added costs of the measure and maintenance required to ensure the equipment operates effectively.

(b) Distribution to Non-Participating Contractor

Marketing materials are to be distributed exclusively by Participating Contractors. Any Participating Contractor found to be providing Program marketing materials to a non-participating contractors for distribution to homeowners will be subject to disciplinary measures.

(c) Website Content

The Participating Contractor shall avoid posting specific Program information and documentation on their individual company websites. Participating Contractors are encouraged to link their websites directly to NYSERDA's website and reference the same information and documentation as NYSERDA's website, which will help ensure consistent distribution of current Program information and documents to all interested parties.

Participating Contractors shall address any Programmatic changes that may affect the content on the website in a timely manner. The Program provides Participating Contractors with a website widget at no cost for the purpose of promoting the Program.

(d) Logo Policy

Participating Contractors may request permission to use NYSERDA's Attribution Logo. Participating Contractors are participants in the Program, not NYSERDA employees, contractors, partners, or representatives. Participating Contractors and their employees must therefore identify themselves as representatives of the Participating Contractor's company, not as representatives of NYSERDA or as NYSERDA employees.

Full details and instructions for requesting permission to use NYSERDA's logo are included in Section 12 of the Contractor Resource Manual.

Section 7.06 Computer, Operating System, and Internet Access Requirements

(a) Minimum Requirements

The Participating Contractor shall have access to a computer with an operating system capable of running the required and necessary Program software. The Participating Contractor shall have an active email account(s) with the ability to receive emails from NYSERDA and Program affiliates and check email on a regular basis for Program Announcements and communications. The Participating Contractor shall ensure the email addresses on file with the Program are current and must identify a Program contact, Quality Assurance contact and webmaster (if applicable). The Participating Contractor shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary.

The Participation Contractor is prohibited from downloading any type of hacking tools, including, but not limited to, network sniffers, vulnerability scanners, or password cracking tools.

(b) Modeling Software

The Participating Contractor shall acquire and use Program-approved energy modeling software for building analysis, energy savings estimation, and reporting. A list of approved software is included in the Contractor Resource Manual.

(c) Use of Program Reference

Should the Participating Contractor no longer participate in the Program, it is required to immediately remove all references to NYSERDA, the Program, and Program financing and incentives from the modeling software that generates the reports.

(d) Training

The Participating Contractor shall actively pursue training provided by software vendor(s) supporting NYSERDA's Programs and become proficient in the use of Program-approved energy modeling software and the Program's databases.

Section 7.07 Standard Terms and Conditions

(a) 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.

(b) No Benefits

The Participating Contractor agrees that if the personnel furnished by the Participating Contractor are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, the Participating Contractor 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. The Participating Contractor 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

The Participating Contractor 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, the Participating Contractor and/or the Participating Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, the Participating Contractor 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 the Participating 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.

(d) Information

The Participating Contractor shall not use information obtained from NYSERDA or NYSERDA's designees in conjunction with its participation in the Program for any purpose other than to implement obligations under this Agreement.

The Participating Contractor acknowledges that information obtained from NYSERDA, or NYSERDA's designees, may include certain information concerning the Program or Program customers that is non-public, confidential, or proprietary in nature. The Participating Contractor agrees such information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by the Participating Contractor, its agents, employees, contractors, or professional advisors, other than is expressly

required to implement its obligations under this Agreement.

(e) Indemnification

The Contractor shall protect, indemnify and hold harmless NYSERDA, the Program Implementation Contractors, Quality Assurance designee 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 Contractor's or its sub-contractor'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 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.

Article VIII. Project Requirements

The Participating Contractor acknowledges that failure to follow Program requirements and procedures, including the work scope submittal and review procedures and processing of completion documents contained in the Agreement, Contractor Resource Manual, and Program Announcements, will result in the loss of applicable incentives, and disciplinary action.

Section 8.01 Required Certifications

(a) Comprehensive Energy Assessment

The Participating Contractor shall ensure that personnel conducting a Comprehensive Energy Assessment are BPI certified at the BPI Building Analyst or BPI Energy Auditor level.

(b) Appropriate BPI or Professional Certification(s) for Proposed Measures

The Participating Contractor may only submit projects to the Program for which it has the appropriate certifications as identified by the Program. For a list of current BPI certifications, visit <http://www.bpi.org>.

Section 8.02 Project Oversight

The Participating Contractor may only submit completion documentation for projects that have had direct oversight by personnel with the appropriate BPI and or Professional Certification as determined by the Program.

The Participating Contractor shall ensure that personnel with the appropriate certification(s) oversee all Program-related projects, including work performed by a sub-contractor. The Participating Contractor shall ensure a technician with the appropriate Program required Professional Certification (s) for the measures installed performs the required project test-out.

Section 8.03 Use of Sub-Contractors

A Participating Contractor employing the services of sub-contractors shall ensure each sub-contractor adheres to Program policies and standards.

(a) Documentation

Any sub-contractor(s) utilized by a Participating Contractor shall be listed on the

homeowner's contract and the contract between the Participating Contractor and sub-contractor shall be submitted to the Program. The Program requires documentation if any of the subcontracted work is funded or financed by the Program. In addition, the use of sub-contractors should be clearly explained to the homeowner prior to the start of work.

(b) Participating Contractor as Sub-Contractor

The Participating Contractor is strongly encouraged to employ the services of other Participating Contractors when sub-contractor work is required.

(c) Business Structure/Sub-Contractor Relationship

The Participating Contractor shall, upon request from the Program, provide information (company name, address, phone number, email address and addition information as needed) on all sub-contractors who have provided services on Program projects.

(d) Poor Performing Sub-contractors

Chronic poor workmanship or unprofessionalism associated with a given sub-contractor identified through customer complaints or through routine QA inspections may result in disciplinary action to the Participating Contractor. In addition, NYSERDA reserves the right to deny future participation of a given sub-contractor on Program projects for any reason including but not limited to poor workmanship, unprofessionalism, or unethical behavior.

(e) Representation

A non-participating sub-contractor of a Participating Contractor 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, any sub-contractor of a Participating Contractor shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementation Contractor.

(f) Past Performance

The Participating Contractor shall not employ or sub-contract with any firm or principals associated with that firm that is under suspension or has been terminated from this Program, or any other NYSERDA program, without NYSERDA's prior written permission. Other employees of Participating Contractors who exhibit poor unprofessionalism or unethical behavior or have demonstrated repeated poor workmanship may be prohibited from participating on Program projects. These individual shall not work on Program projects until NYSERDA provides written permission.

Section 8.04 Comprehensive Home Energy Assessment Process and Report

The Program offers most homeowners free or reduced-cost comprehensive home energy assessments. Availability of free or reduced-cost comprehensive energy assessments may be subject to income eligibility of the homeowner and availability of funding. The Participating Contractor shall follow the free or reduced-cost comprehensive energy assessment reservation and incentive claim process outlined in the Contractor Resource Manual.

The Participating Contractor shall provide the homeowner with an assessment report within 14 calendar days of site visit audit completion. The report shall be generated from Program-

approved software and include a detailed work scope proposal that identifies measures and pricing for improving the energy efficiency, comfort and safety of the home. The report shall include all energy efficiency, comfort, health and safety opportunities that exist in the home regardless of type of service(s) the Participating Contractor offers (i.e., a Participating Contractor with heating certification needs to identify applicable envelope issues in the report) while adhering to the policies and procedures. The report shall comply with the Audit procedures documented in the Contractor Resource Manual.

Section 8.05 Minimum Production Requirement

The Participating Contractor is required to report, annually, a minimum of twelve (12) completed projects, and/or at least \$48,000 in completed, eligible work. A Participating Contractor that fails to meet the production requirement will be placed on probation for a period of 90 days. During that time will be required to meet the annual production requirement, or report a minimum of three (3) completed projects, averaging at least \$4,000, to the Program. If a Participating Contractor fails to meet the project completion requirement during the probationary period, their participation in the Program will be subject to termination. Refer to Article X for additional information about probation and termination designations.

Section 8.06 Project Submittal Review, Work Stoppage, and Completion

The Participating Contractor shall only submit work to the Program under the BPI GoldStar Company and organization name that is on file with NYSERDA in the fully executed Agreement. Additionally, the proposed Program work scope and energy efficiency measures shall include only measures identified by the Program as eligible. A list of Program Eligible Measures and Accessories is provided in the Contractor Resource Manual.

For each project expected to receive Program benefits, the following steps must occur in the order listed:

(a) Project Submittal

The Participating Contractor shall only submit projects that comply with the policies set forth in this Agreement, the Contractor Resource Manual, and any applicable Program Announcements. Project submittal documentation shall include: building models developed using the Program approved modeling software; the completed Project Incentives and Financing Eligibility Summary Report or Certificate of Completion; signed contract detailing work to be completed; test-in data; and any other information identified in the Contractor Resource Manual. The Program will reject non-compliant Project submittals.

(b) Initial Project Review

All Projects submitted to the Program shall be subject to the review process as detailed in the Contractor Resource Manual. It is strongly recommended that work not start on any project until the Participating Contractor has been notified that the submitted work scope has complied with Program requirements. This policy also applies to any Field Change Order(s).

Projects started without Program review and approval must be submitted to the Program within 14 days after the start of work. Program incentives will be calculated based upon the project submission date, not the date that work began on the project. Certain energy efficiency measures, including but not limited to windows and doors, may be subject to review by the State Historic Preservation Office (SHPO) and may

require a SHPO form to be submitted and approved prior to commencement of work on these measures. See Contractor Resource Manual for further details.

Any project that has been partially or fully completed prior to the initial Project review process being completed is at the Participating Contractor's risk. In these cases, the Participating Contractor shall assume all financial liabilities associated with these projects (i.e., Contractor incentives and consumer financing, as well as the value of the consumer incentives and/or market rate contractor incentive).

(c) Work Stoppage

While in the course of performing an energy efficiency upgrade, if the contractor discovers a deficiency that prevents the energy efficiency work from going forward, the contractor will stop work; notify the homeowner of the deficiency; explain that the energy efficiency work will be done once the deficiency is addressed; discuss restoration of the affected areas with the customer; and restore the affected areas.

(d) Project Completion

Upon completion of a Program project, the Participating Contractor shall upload all required data identified in the Contractor Resource Manual including, but not limited to: test-out information; building model software files; and a signed Project Incentives and Financing Eligibility Summary Report.

For each project completed through the Program, the Participating Contractor shall submit all required documentation needed to process Program incentives. All completion documents must be submitted to the Program within ninety (90) days following work scope approval. Projects not completed within the 90-day approval timeframe may need to reapply for approval, at the sole discretion of NYSERDA.

All completion documents must be submitted to the Program within thirty (30) days of the homeowner signing the Project Incentives and (if financing is included) Financing Eligibility Summary Report. Project completion documentation received after the 30-day deadline may be denied incentives, and the Participating Contractor will assume all financial liabilities for the project, including the value of the market rate contractor incentive or consumer incentives, where applicable. For the complete list of project submittal and completion documents, please refer to the Contractor Resource Manual.

(e) Satisfactory Job Review and Financing Approval

Notification of job review approval and Program financing approval are independent of each other. Approval of Program financing or incentive does not imply a satisfactory job reviews of a submitted project. Similarly, a satisfactory job review does not imply approval of Program financing or incentives.

Section 8.07 Project Minimum Requirements and Eligible Measures

All projects submitted to the Program shall comply with the Eligible Measures and Accessories list detailed in the Contractor Resource Manual.

Section 8.08 Pricing

The Participating Contractors shall apply fair and reasonable pricing in providing Program services, including sub-contracted services, for the installation of Eligible Measures. NYSERDA reserves the right to request additional information from contractors on pricing and to obtain

comparative price quotes. The Program reserves the right to withhold Program incentives or financing in cases that do not appear to be fair and reasonable, or for which requested documentation has not been provided.

Section 8.09 Customer Contribution

NYSERDA provides up to 50% of the cost of eligible work for income-qualified customers through Assisted Home Performance with ENERGY STAR. The customer is responsible for the balance of work and the Participating Contractor must clearly state the customer's contribution on the contract. The Participating Contractors must not inflate costs to maximize program funding and must not change the required customer contribution.

Section 8.10 Cost-Effectiveness

The Program will rely on the Eligible Measures list for determining eligibility for incentives and financing. These measures have been deemed by NYSERDA as meeting the program's cost-effectiveness criteria. Eligibility requirements for Program financing are outlined in Section 4 of the Contractor Resource Manual. The Program will monitor project costs as well as projected and actual energy cost savings while working with contractors to ensure the Program meets its energy savings and cost-effectiveness targets.

Section 8.11 Project Payment Processing

It is expressly understood that NYSERDA and its Program Implementation Contractors will not initiate the processing of any project payment to a Participating Contractor until all required project documentation has been received and verified as accurate. The list of required project documentation is provided in the Contractor Resource Manual.

Section 8.12 Program Financing Options

The Participating Contractor shall ensure that the Program financing options are utilized only for the installation of Eligible Measures and Accessories identified on a Program project. A list of Program Eligible Measures and information on Program financing options is provided in the Contractor Resource Manual.

Section 8.13 Repayment or Recapture of Program Incentives

The Participating Contractor acknowledges that failure to follow Program requirements and procedures contained in this Agreement, including the Low Income Addendum, the Contractor Resource Manual, and future Program Announcements will result in a loss of applicable incentives and possible disciplinary action.

The Participating Contractor also acknowledges that if NYSERDA determines that the Participating Contractor has not strictly adhered to the terms and conditions of the Program for a project, any Program incentives paid to the homeowner 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 thirty (30) days based on the full value of any Program incentives paid on Projects that do not comply with Program terms, conditions, policies or procedures identified in this Agreement, the Contractor Resource Manual, or Program Announcements.

Section 8.14 Income-Eligibility Verification and Information

To qualify for income-based incentives, a homeowner's or renter's income must be verified by the Program. Upon income-eligibility verification, the Participating Contractor shall inform the homeowner of the incentives they qualify for. While an income-eligible homeowner may decline in writing to accept free services through the Low-Income Program, the Participating Contractor must inform the homeowner of their eligibility to receive free services, even if the Participating Contractor does not provide Low-Income Services (EmPower) through the Program. The Participating Contractor understands that the Program monitors and maintains the same high quality of service for all customers, and must not misrepresent the availability of quality of services available through contractors approved to offer low-income services through NYSERDA's program.

Section 8.15 Mechanics Lien

The Participating Contractor shall agree to limit any Mechanics Lien on any project to the value of such project minus the value of the incentive.

Section 8.16 Dwellings Owned by Employees

Prior to project approval, the Participating Contractor must promptly notify the Program Implementer in writing if any personal or business relationship exists with any household served by the Contractor to the Program, or if the Participating Contractor intends to provide services to a dwelling owned by any principal or employee of the company

Article IX. Quality Assurance

The main goal of the Program Quality Assurance (QA) process is to verify that projects in the Program meet all Program requirements while maintaining healthy and safe living conditions for the occupants. The secondary goal of the Program QA process is to identify Participating Contractors who regularly provide effective, high quality services to their customers, and to support their efforts. A third goal is to enable early detection of performance and compliance issues, at both individual contractor and program-wide levels, to support prompt resolution, identify needs for development or delivery of training, and ensure market confidence. Participating Contractors who provide high quality services may be recognized by NYSERDA through awards or other means, while Participating Contractors who cannot regularly complete Program projects meeting the standards of the Program are subject to Probation, Suspension and Termination from the Program. The QA process for the Program includes an Administrative Review and QA Field Inspections.

The current Program QA Policy and Procedures documents are in the Contractor Resource Manual, and any updates will be issued to the QA contact for all Participating Contractors as necessary to comply with changing standards or meet the goals of the Program. Participating Contractors shall be responsible for staying current with all revisions to the QA Policy and Procedures document, BPI technical standards and the Program Material and Installation Guidelines.

The Participating Contractor shall not inhibit or discourage homeowners from participating in the Program QA process and shall make a good faith effort to facilitate the Program QA process. A homeowner may request a QA Field Inspection up to one year after the completion of a Program project; however, the Program goal is to conduct QA Field Inspections within 90 days from the signing of the Certificate of Completion/Project Incentives and Financing Eligibility

Summary Report. Additionally, projects completed for more than one year may be subject to inspection if the situation warrants.

The Participating Contractor shall provide project related information to NYSERDA, the Program Implementation Contractors, or QA designee upon request. This information may include, but is not limited to: the approved modeling software files, contracts, and installed product information.

Article X. Participating Contractor Status Designations

Section 10.01 Participation

The Participating Contractor shall be classified in one of the participation status designations listed below. Each status designation shall be subject to limitations or requirements associated with that classification, as detailed below. NYSERDA reserves the right to modify the definition, limitations, and requirements of the participation status designations at any time. NYSERDA retains sole discretion for determining the Participating Contractor's progression into and through each status designation. In all cases, NYSERDA's written decision is final.

(a) Provisional

(i) Minimum Period of Performance

The Participating Contractor shall have the participation status of 'Provisional' during, at a minimum, the first six (6) months of participation. During this time, NYSERDA may limit the number of projects a Provisional Contractor can submit to the Program as determined based on reported and founded customer complaints or failed QA field inspections, or other compliance issues deemed by NYSERDA as cause for limitation.

(ii) Past Participants

Participating Contractors renewing their Agreements who have not completed a minimum of 12 projects during the past 12 months may, at the Program's discretion, be designated as Provisional.

(iii) Program Benefits

The Participating Contractor will be eligible for contractor incentives, its customers will have access to financing offered through the Program, and income-eligible households will be eligible to receive Program incentives.

(iv) Quality Assurance/Quality Control (QA/QC)

The Provisional Participating Contractor must complete a minimum of three projects meeting the minimum standard QA requirements. These QA requirements must be met by the sixth inspected project or within a period of one year from the date of completion of the first completed project, whichever comes first.

Alternatively, the Participating Contractor must have consistently delivered quality projects for a period of greater than one year with an average score of all completed projects exceeding the minimum standard QA requirements, have no more than three (3) failed QA inspections at any time during the 12-month period, and have a positive correlation of performance over twelve (12) months. Status may proceed to 'Full' be extended as 'Provisional' or the Participating Contractor

may be terminated from further participation.

At any time during, or at the end of a Participating Contractor's Provisional period, NYSERDA can change the Participating Contractor's status to Probation, Suspension, or Termination for any reason including, but not limited to poor workmanship, lack of responsiveness, customer complaints, unprofessional behavior, or failure to meet minimum production requirements of the Program.

(b) Full

The Participating Contractor who is not operating under any of the other status designations described herein, and has met all requirements of the Program, abides by the conditions of this Agreement and provides quality services utilizing industry best practices shall have the status designation of Full participant. Full participants are entitled to all applicable Program benefits.

(c) Inactive

A Contractor that voluntarily decides to end participation in the Program will be placed in Inactive status. A contractor in Inactive status will relinquish all privileges associated with participation, including access to incentives. The Contractor must immediately remove any reference to the Program from any of the Contractor's materials. To resume participation, the Contractor will need to reapply and will be reviewed for future eligibility at NYSERDA's sole discretion.

Section 10.02 Disciplinary Measures

A Participating Contractor who fails to comply with any of the terms of this Agreement, the Addendum (if applicable) and the Contractor Resource Manual or who provides fraudulent or misleading Program documentation, is subject to the provisions of this Section.

NYSERDA reserves the right to impose any of the following disciplinary measures at any time. In addition, NYSERDA reserve the right to hold approvals on all submissions while investigating alleged issues. In all cases involving a Participating Contractor's disciplinary status or denial of Program incentives, NYSERDA's written decision is final.

(a) Probation

(i) Minimum Period of Performance

A Probation period will last no less than sixty (60) days and the Participating Contractor will be subject to a higher level of QA/QC oversight.

(ii) Program Benefits

Under the Probation Status, the Participating Contractor will be eligible for contractor incentives, its customers will have access to financing offered through the Program, and income-eligible households will be eligible to receive Program incentives.

(iii) Quality Assurance/Quality Control (QA/QC)

Probationary Status is reserved for Participating Contractors that have failed to meet the requirements of the Program. Probation is prescriptive in nature with both a specific list of results to be achieved and a time frame for achieving those results. A Participating Contractor may be placed on Probation for any of the following reasons:

- **Violation of Program Policies and Procedures or Ethical Standards**
 The Participating Contractor has failed to adhere to Program policies and procedures as outlined in this Agreement. This includes but is not limited to poor or unclear contract documents, misrepresentation of available homeowner incentives, poor quality of work, repeated submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, performing work in municipalities they are not licensed to work in, and not obtaining proper building permits.
- **Breach of BPI GoldStar Contractor Agreement**
 BPI informs NYSERDA that the Participating Contractor is in breach of its BPI GoldStar Contractor Agreement or is found to not have appropriate certified staff to meet Program requirements.
- **Minimum Production**
 A Participating Contractor is not meeting the minimum production requirements of the Program.
- **Failure to meet Quality Requirements**
 Failure to consistently deliver completed projects which pass the QA standard required for 'Full' status.
- **Health and Safety and other Critical Violations**
 Failure to take effective corrective action on a critical deficiency.
- **Unresponsive to Corrective Action Requirements**
 Three (3) or more Corrective Action Reports (CARs) that have not been responded to or remain unresolved for more than thirty (30) days.
- **Customer Complaints**
 NYSERDA and its designees have received one or more valid Customer Complaints per quarter, the Participating Contractor is unresponsive or slow in resolving customer issues or does not comply with the Conflict Resolution Policy included in their BPI GoldStar Contractor Agreement, exhibits poor quality workmanship or unprofessional manner on one or more projects.
- **Contractor is Not Licensed/Not Obtaining Proper Permits**
 The Program is informed that the Participating Contractor performed work in a municipality they are not licensed to work in. The Participating Contractor performs work without obtaining the proper permits as required by the governing municipality.
- **Failure to Follow Program Procedure**
 The Participating Contractor continuously submits incorrect or incomplete documentation or requires an excessive amount of administrative or technical support.

(b) Suspension

A Suspended Participating Contractor shall be removed from the NYSERDA website and shall not represent themselves as a Participating Contractor, accept any applications for, nor recruit new participants except in the execution of remedial action as approved by NYSERDA. A Suspended Participating Contractor forfeits its eligibility for contractor incentives and its customers will not have access to incentives or financing offered through the Program. NYSERDA has sole discretion in determining whether to suspend a Participating Contractor. NYSERDA has sole discretion in determining the length of the Suspension Period. Grounds for suspension shall include, but are not limited to, the following:

- **Unresponsive-Probation**
The Participating Contractor is on Probationary status and has either been unresponsive to, or failed to adequately fulfill, the terms of their probation
- **Unresponsive-Other**
The Participating Contractor is unresponsive to addressing outstanding customer concerns, Corrective Action Reports or requests from Program or Program Implementation staff.
- **Violation of Program Policy and Procedures or Ethical Standards**
The Participating Contractor has failed to adhere to Program policies and procedures as outlined in this Agreement, thereby putting the Program, NYSERDA, and homeowners at risk. This includes but is not limited to poor or unclear contract documents, misrepresentation of available homeowner incentives, poor quality of work, repeated submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, performing work in municipalities they are not licensed to work in, and not obtaining proper building permits.
- **Suspension or Termination of BPI GoldStar Contractor Agreement**
BPI informs NYSERDA that the Participating Contractor's BPI Goldstar Contractor status has been suspended or terminated.
- **Contractor Staffing**
The Participating Contractor has staffing changes or staffing certification status changes resulting in the contractor not maintaining the minimum BPI certification requirements
- **Misrepresentation**
The Participating Contractor has submitted false or fraudulent documentation to the Program at any time, during any phase of participation in the Program. This includes, but is not limited to forging customer signatures, falsifying existing onsite conditions and submission to Program of uninstalled measures.

Participating Contractors designated in the 'Suspended' or 'Terminated' status below will be removed from the NYSERDA website, and shall not represent themselves as a Participating Contractor, accept any applications for, nor recruit new participants except in the execution of remedial action as approved by NYSERDA.

(c) Termination

NYSERDA has sole discretion in determining whether to terminate a Participating Contractor. A Participating Contractor may be terminated from participation in the Program for any of the following reasons:

- Has been on suspended status for more than 30 days and has been unresponsive to or failed to adequately fulfill the terms of their suspension
- BPI GoldStar Contractor Lapse While Suspended
- Submits falsified documents or unauthorized signatures to the Program
- Commits illegal actions while participating in the Program
- Is convicted or has a principal who is convicted of a criminal charge that casts the Program in negative light or calls the integrity or workmanship of the Contractor into question
- Is in gross violation of Program standards
- Repeatedly bills for uninstalled measures
- Fails to meet the terms of the Provisional period

Participating Contractors designated with the 'Termination' status are prohibited from participation in the Program. Customers with incomplete projects will be notified of the termination and may be offered such remedies as NYSERDA deems appropriate. If appropriate, NYSERDA may notify the New York State Attorney General, the New York State Department of Labor, the Better Business Bureau, BPI, or others of NYSERDA's findings and decision to terminate the Participating Contractor. Further, the officers and owners of the terminated Contractor are prohibited from being or becoming officers or owners of any other Participating Contractor. Nothing in this process relieves the Partner of the responsibility to fulfill any remaining obligation to the Program, or Program customers.

- (b)** A Terminated Participating Contractor shall be removed from the NYSERDA website and shall not represent themselves as a Participating Contractor, accept any applications for, nor recruit new participants except in the execution of remedial action as approved by NYSERDA. A Terminated Participating Contractor forfeits its eligibility for contractor incentives and its customers will not have access to incentives or financing offered through the Program. All references to NYSERDA, and ENERGY STAR must be removed from all marketing materials, vehicles, and advertising including vehicle clings and website as applicable.