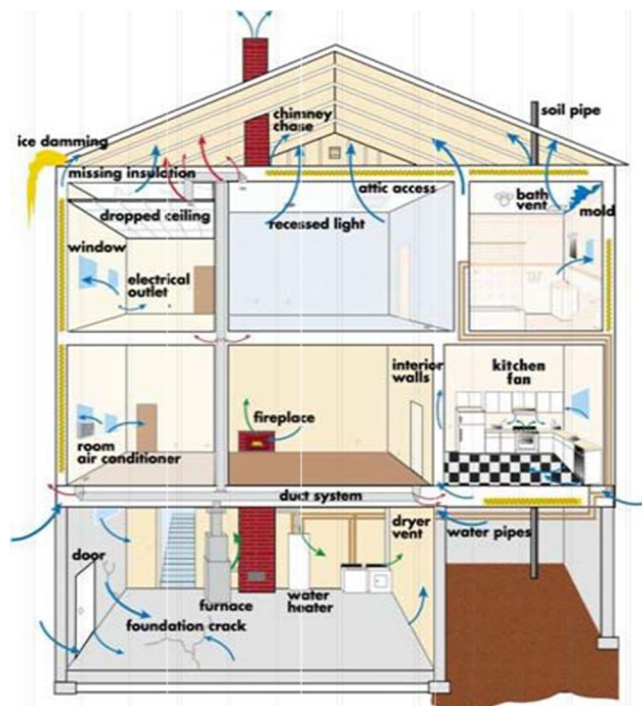




**NYSERDA**

# 2019-2021 NY Residential Existing Homes Program Contractor Participation Agreement



***Effective***

***January 01, 2020 – December 31, 2021***



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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, which includes Assisted Home Performance with ENERGY STAR®, a moderate-income component (for households earning 80% or less than Area Median Income), and EmPower New York, a low-income component (for households earning 60% or less than the State Median Income). These two components are referred to as the “Program” and assist New Yorkers in improving the energy performance, durability, comfort and safety of existing one-to-four-family homes throughout New York State. The Program meets the criteria of U.S. Department of Energy’s (DOE’s) Home Performance with ENERGY STAR program.

This Participation Agreement also allows for participants to serve market rate customers (for households earning more than 80% of the Area Median Income / State Median Income) through the Residential Energy Audit program and financing programs.

The objectives of the Program are to enhance the delivery of building performance services by using state-of-the-art diagnostic tools and building science principles to cost-effectively achieve goals which include decreasing energy consumption and costs, reducing greenhouse gas emissions, and enhancing building stock resiliency while simultaneously addressing health and safety issues pertaining to indoor air quality.

NYSERDA relies upon the following implementation and external contractors to provide program support services:

Implementation Contractors:

- Technical Services
- Shared Services
- Loan Origination
- Quality Assurance

External Contractors:

- Loan Servicing
- Community Energy Advisors

Participating Contractors are independent contractors delivering building performance services to Program participants. NYSERDA provides assistance to both Program participants 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 Participating Contractors to complete work through the Program.

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 Contractor Participation Levels

The Participating Contractor shall maintain the minimum certifications outlined for at least one of the participation levels listed below. By entering into this Agreement, the Participating Contractor authorizes NYSERDA to share and obtain information with and from the Building Performance Institute (BPI) and other certifying bodies for the purpose of verifying employee certifications and work quality. As a minimum requirement to perform audits or Home Performance work through the Program, the Participating Contractor must employ staff with the required certifications outlined below. NYSERDA may modify or update these requirements at any time, Per Section 4.04 of this Agreement.

**(a) Audit Contractor-** Reserved for Participating Contractors performing audits and/or electric reduction direct install projects only. Audit Contractors must maintain a minimum of one full time staff member with one of the following certifications.

- (i) BPI Building Analyst
- (ii) BPI Energy Auditor
- (iii) BPI Multifamily Building Analyst
- (iv) AEE Certified Energy Auditor
- (v) ASHRAE- Building Energy Assessment Professional
- (vi) HERS Rater
- (vii) LEED Rater
- (viii) ICP Quality Assurance (QA) Assessor

**(b) Home Performance Contractor-** Reserved for Participating Contractors performing audits and maintaining the certification requirements for one or more of the home performance installation services outlined below. In order to install home performance measures through the Program, the Home Performance Contractor must be an Audit Contractor in accordance with (a) above and have the certification required for that specific measure and provide the Program with a minimum of 6 months experience in installing that measure type as outlined in Section 3.01(b). In addition to measure certification, it is highly recommended the Participating Contractor pursue any manufacture's training/certifications for any equipment they are installing as part of a Program project. Home performance measures must meet all Program installation and health and safety requirements as outlined in the Contractor Resource Manual. Home Performance Contractors must maintain one or more of the specialty certifications listed below:

#### 1) Shell/Envelope

- (i) BPI Envelope Professional

NYSERDA will consider the following BPI advanced certifications in lieu of BPI Envelope Professional, provided the Participating Contractor can meet Program requirements, as outlined in Section 3.01(b) of this Agreement:

- (i) BPI Crew Leader or
- (ii) BPI Energy Auditor or
- (iii) BPI Quality Control Inspector or

(iv) BPI Retrofit Installer Technician

**2) Central Air Conditioning**

- (i) BPI AC/Heat Pump or
- (ii) NATE AC or
- (iii) NATE Heat Pump

**3) Air Source Heat Pump**

- (i) BPI AC/Heat Pump or
- (ii) NATE Heat Pump or
- (iii) Approved Installer in NYS Clean Heat

**4) Heat Pump Water Heater/Electric Water Heater**

- (i) BPI AC/Heat Pump or
- (ii) Manufacturer's training or
- (iii) Company is licensed plumber and/or electrician in the locality where the work will be performed or
- (iv) Approved installer in NYS Clean Heat

**5) Oil Heat Work**

- (i) BPI Heating Professional or
- (ii) NATE Oil Heating or
- (iii) NORA Oil Heat Silver or
- (iv) NORA Oil Heat Gold

**6) Manufactured Homes (Mobile Homes)**

- (i) BPI Manufactured Housing Professional Certification
- (ii) Provide documentation of your company's detailed procedures for serving manufactured homes. Detail provided must be enough to demonstrate to Program staff that the applicant exhibits proficiency with installing energy efficiency measures in manufactured housing stock. NYSERDA reserves the right to request additional supporting information as necessary to establish a contractor's experience. Acceptable documentation should include:
  - a. Type of work performed (Insulation/mechanicals)
  - b. Materials used
  - c. Number of manufactured homes served in last 6 months
  - d. Installation methods
  - e. Any manufactured home-specific training received in the past 36 months

**7) Gas Heat Work/Domestic Hot Water Heaters**

- (i) BPI Heating Professional or
- (ii) NATE Gas Heating

**8) Pellet Stove**

- (i) BPI Heating Professional or
- (ii) Chimney Safety Institute of America (CSIA) – Certified Chimney Sweep®
- (iii) National Fireplace Institute (NFI) – Pellet Stove Specialist

**(c) Change in Participation Level**

NYSERDA will review Participating Contractor's Program status periodically. In the event a contractor no longer maintains the minimum credentials type, they will be classified to the previous qualifying level, providing they still meet the minimum requirements for Program participation. For example, if a **Home Performance Contractor** loses their specialty certification but retains BPI Building Analyst, they will be considered an **Audit Contractor**.

**Section 2.02 Certified Staff**

Measures installed through the Program must be installed by a Participating Contractor who possesses the proper credentials or by using a sub-contractor who maintains the necessary credentials as defined in Section 2.01 above. The Participating Contractor shall ensure that work performed in the Program adheres to the technical standards established and maintained by the credentialing organization, for each certification and meet the Program requirements outlined in the Contractor Resource Manual.

Per Section 3.01(b), the Participating Contractor shall provide NYSERDA written documentation that identifies each individual in the Contractor's business and their certifications. As an ongoing requirement, the Participating Contractor shall immediately inform the Program of any change to the list of certified staff.

**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 staff with Program approved certifications for each approved service territory. The Participating Contractor shall employ at least one individual meeting the certification requirements of Section 2.01 per 75-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 or as approved through a separate communication submitted to NYSERDA. The Participating Contractor shall not offer or provide Program incentives in other territories where it does not have prior 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 implementation contractors. 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 a program implementation contractor. Failure to comply with permitting requirements may result in disciplinary action.

### **Section 2.06 Codes**

All Participating Contractors and any sub-contractor retained by a Participating Contractor must perform Program work in compliance with all applicable codes, regulations, laws, and standards in the jurisdiction where completing work. In instances where Program guidance may conflict with state and/or local code, code must take precedent.

### **Section 2.07 Health and Safety**

Each Participating Contractor must have a health and safety plan and maintain a copy of the plan at the work site. Contractors must maintain Safety Data Sheets (SDS) for products and materials used as part of the project. SDS must be available and presented to program participants upon request.

### **Section 2.08 Insurance**

- a) 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 in this Section. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement; name or be endorsed to cover the Participating Contractor as the insured, and NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and be reasonably satisfactory to NYSERDA in all other respects. NYSERDA reserves the right to request insurance documentation and copies of sub-contractor agreements for any sub-contractor, and to request the identity of all individuals participating in Program.

The types and amounts of insurance required to be maintained under this Section are as follows: (1) 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, 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, and (2) Workers' Compensation coverage as required by New York State.

Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Participating Contractor shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Participating Contractor shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not make payments for projects completed under this Agreement without current insurance certificates.

- b) In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, the Participating Contractor shall deliver to NYSERDA a certified copy of each policy upon request.

Within five working days, or contemporaneously with the requirements of each insurance policy, the Participating Contractor shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Participating Contractor, any non-customer party to the applicable Program participant agreement or NYSERDA.

### **Section 2.09 Workers' 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: <https://ce-200-form.com/>.

The Participating Contractor must provide proof of Workers' Compensation upon request by NYSERDA.

### **Section 2.10 Warranty**

The Participating Contractor shall provide the Program participant a written warranty of labor and materials valid for a minimum of one (1) year from the date that NYSERDA has reviewed the completion submission paperwork and approved the project for payment. Equipment installed shall carry at a minimum, the manufacturer's warranty, plus optional extended warranty coverage, if applicable. The Participating Contractor must provide copies of all relevant warranties to the Program participant. For installed measures not meeting Program requirements, as later identified through a Program participant 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 2.11 Program Participant Issue and Dispute Resolution**

NYSERDA requires the Participating Contractor maintain a dispute resolution policy on file. If a Participating Contractor, or its sub-contractor, becomes involved in a dispute with a Program participant over business practices, the Participating Contractor shall work to settle the dispute amicably utilizing the Participating Contractor's customer dispute resolution policy.

NYSERDA may request a copy of the Participating Contractor's dispute resolution policy at any time.

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(s) harmless from any legal action arising from work associated with the Program per Section 7.09 of this Agreement. Failure to resolve Program participant issues in a timely manner may result in disciplinary action.

## Section 2.12 Financing & Incentives

NYSERDA administers the Green Jobs - Green New York (“GJGNY”) Loan Fund for Residential Financing (the “GJGNY Loan Fund”) which was authorized by Title 9-A of Article 8 of the Public Authorities Law of the State of New York, as amended (known as the Green Jobs-Green New York Act) to finance energy audits and energy efficiency retrofits or improvements, including solar energy and other renewable installations, for the owners of residential 1-4 family buildings (“GJGNY Loan”).

The ability to provide access to GJGNY loans and other participant financing options (“Program Financing”) and incentives through the Program is reserved exclusively for the Participating Contractor. At no time may a non-participating subcontractor 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. Program participants can receive an incentive on a measure that is also receiving a utility incentive or an incentive through another NYSERDA program; however, the combined value of incentives cannot exceed value of the total cost of the measure. For any measure receiving an incentive from a utility or other outside funding, contractors must inform the Program of the incentive source and amount. Application of fair and reasonable pricing is also required per Section 8.07 of this Agreement for any measures installed through the Program.

If the Participating Contractor wishes to offer third-party (other than GJGNY Loan Fund) vendor financing to any Program participant, 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.

Participating Contractors have the ability to offer financing with a GJGNY Loan to customers with a household income greater than 80% of the Area Median Income. The terms and conditions of offering a GJGNY Loan to these customers can be found in the Green Jobs Green New York Loan Fund Residential Financing Manual, located in Addendum 1 of the Contractor Resource Manual.

## Section 2.13 Residential Energy Audit Program

For customers with income above 80 percent of Area Median Income, NYSERDA offers the Residential Energy Audit Program. Participating Contractors in the Residential Existing Homes Program are eligible to participate in the Residential Energy Audit Program if the following conditions are met:

- They are in good standing with the New York Residential Existing Homes Program New York Program (full or provisional status)
- **Each individual** who will offer energy audits through the Residential Energy Audit Program must hold at least one the following certifications:
  - AEE Certified Energy Auditor
  - ASHRAE- Building Energy Assessment Professional
  - BPI Building Analyst

- BPI Energy Auditor
- BPI Multifamily Building Analyst
- HERS Rater
- ICP Quality Assurance (QA) Assessor
- LEED Rater

The Residential Energy Audit program has a different set of requirements and procedures than the Assisted Home Performance with ENERGY STAR or EmPower New York programs. Contractors who are interested in participating in the Residential Energy Audit Program must fully read the Residential Energy Audit Program Manual, which can be found as Addendum 2 of the Contractor Resource Manual, and the Residential Energy Audit Program Participation Agreement which can be found as Addendum 3 Contractor Resource Manual.

To participate in the Residential Energy Audit Program, Participating Contractors must submit a list of staff members who will complete Residential Energy Audits and a copy of the auditing certifications to [homeaudits@nyserda.ny.gov](mailto:homeaudits@nyserda.ny.gov).

## Article III. General Application Information

### Section 3.01 Application Requirements

The Participating Contractor shall provide NYSERDA the information below when submitting the Participation 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 and submit the completed Agreement Application Signature Form to NYSERDA indicating agreement with its terms. The Agreement Application Signature Form must be submitted by an individual with the full power and authority to enter into an Agreement on behalf of the Company.
- (b) Detail of company and staff experience in the energy efficiency sector. This is a requirement for all new applicants and for returning applicants at NYSERDA's request.
  - (i) A minimum of three completed references detailing relevant energy efficiency projects performed within the past six months. The reference must contain a detailed description of the work performed and customer contact information.
  - (ii) Employee roster of both certified and non-certified employees providing work experience, previous firms worked at and training. The contractor must provide sufficient information for Program staff to make a determination on the qualifications of a contractor to perform work through the Program. It is NYSERDA's sole discretion to request additional information as necessary for determining the eligibility of an applicant in meeting the requirements of Section 2.01 of this Agreement.
  - (iii) **Home Performance Contractors** should provide documentation for a minimum of 6 months experience for each type of specialty measure work they are looking to perform through the Program. If for example a contractor is looking to perform Oil Heat Work through the Program, they should document how many installs they have performed for the past 6 months, type of equipment installed, and reference of the standards/procedures used (BPI, manufacturers, NORA) during a typical installation.
- (c) Certificate of Insurance
- (d) Dba form (if applicable)

### **Section 3.02 Evaluation Criteria for Contractor Acceptance**

NYSERDA will evaluate the information provided on the Participation Agreement Application Signature Form and review all submitted documentation prior to approving an Agreement. NYSERDA will not make a determination on any Participation Agreement until all the requested information is received by NYSERDA from the applicant. The decision to fully execute an Agreement is at NYSERDA's sole discretion.

- (a)** For both new applicants and returning applicants, key evaluation criteria include, but are not limited to the following:
  - (i)** An on-boarding interview with NYSERDA and implementation staff. This requirement 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)** Confirmation that applicant has been in business for a minimum of six months, with documentation of three recently completed energy efficiency projects.
  - (iv)** Documented experience with advanced building science methods, as demonstrated through proof of professional certifications, training certificates, awards and review of provided company information and information publicly 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 certifications to related trainings (such as BPI, SPFA, NATE, NORA, manufacturer's installation certification).
  
- (b)** For returning applicants, 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, Program participants, other contractors and Program implementation contractors.
  - (v)** Satisfactory record of fair and ethical business practices.
  - (vi)** Responsiveness to Program participant complaints, Program implementation contractor inquiries, and NYSERDA directives.
  - (vii)** Contractors who have been suspended or terminated from the Program or other NYSERDA Programs.

## **Article IV. Agreement Terms**

### **Section 4.01 Program Participation 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 an applicant's approval or suspend or terminate a Participating Contractor from 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.

Following execution of this Agreement, the Participating Contractor agrees to be an active contributor to the Program by providing high quality and professional building performance services to Program participants. 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 an implementation contractor.

### **Section 4.02 Project Eligibility**

The Program provides incentives and access to financing 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 stand-alone additions, extensive gut rehabilitation (i.e. demolition to bare walls), or for energy related improvements that are required by state or local building code.

### **Section 4.03 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 4.04 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 notifications shall be communicated via email and posting of the Program Announcement on the HPwES Contractor Support Site at <http://hpwescontractorsupport.com> and the NY HP Portal, <https://nyserda.energysavvy.com>. It is the Participating Contractor's responsibility to ensure the appropriate Program contact's email address is on file with NYSERDA in the event of staff additions/losses or responsibility changes.

### **Section 4.05 Post Termination Obligations**

Articles VI, VII, IX and X and Sections 2.08 (b), 2.10 and 2.11 shall survive termination of this Agreement.

## **Article V. Program Support**

### **Section 5.01 Program Support**

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

- (a) Financial incentives for contractors and Program participants;
- (b) Access to free audits;
- (c) Access to GJGNY Loan Fund for Program participants and for customers with a household income of greater than 80% of the Area Median Income;
- (d) The opportunity to respond to leads generated from NYSERDA's public awareness campaigns, Community Energy Advisors, and the residential program's website;
- (e) Use of approved NYSERDA marketing materials that can be customized to include the Participating Contractor's logo and other company information;
- (f) Third-party Quality Assurance;
- (g) Technical assistance;
- (h) Opportunities to participate in other NYSERDA pilot initiatives (i.e., programs, studies) as needs arise;
- (i) Access to the web-based Portal for project submission and tracking and program communication; and
- (j) Prompt payment for eligible incentives and financed projects.

## **Article VI. Contractor Relations with Program Participants**

### **Section 6.01 Program Participant Inquiries**

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

### **Section 6.02 Referrals**

Participating Contractors shall accept referrals from the Program and shall make every reasonable effort to encourage applicants 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 their customers from participating in the Program, including options for free or partially-incentivized services for low and moderate income customers through alternative contractors, will be subject to the disciplinary measures detailed in Section 10.01 of this document.

### **Section 6.03 Timely Communication**

Participating Contractors shall ensure prompt and accurate reporting of all audit and project completions to Program participants and the Program. Participating Contractors shall respond to inquiries from Program participants, Program staff, and Program implementation contractors 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, depth, type and quantities for each measure should be clearly identified. Any changes to the contract should be identified in a field change order, signed by the Program participant and submitted as part of the required Program paperwork.

Upon request by NYSERDA or Program implementation staff, the Participating Contractor shall provide additional details regarding contractual terms and costs for the purposes of project review.

### **Section 7.02 Professional Conduct**

The Participating Contractor shall comply with all Program requirements, treat all Program participants fairly, provide accurate information on all available Program Financing and incentives 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 at all times when interacting with Program participants, NYSERDA staff, Program Implementation contractors, and external Program contractors. 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 Past Performance**

At NYSERDA’s discretion, an employee of a Participating Contractor who has demonstrated unprofessionalism, unethical behavior or has exhibited poor workmanship on one or more past Program projects may be prohibited from working on Program projects. This includes any staff member associated with a former Participating Contractor who was under suspension or terminated from the Program, or any other NYSERDA program. NYSERDA will notify the Participating Contractor of any individuals prohibited from working on Program projects and these individuals will continue to be prohibited from working on Program projects unless written consent is provided by NYSERDA.

### **Section 7.05 Program Representations**

The Participating Contractor shall not engage in unfair or inaccurate representations of NYSERDA, the Program, the Program Implementation contractors, external Program contractors, Community Partners, other Participating Contractors or Program affiliates.

### **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 currently meets Program participation requirements, 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.

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

### **Participating Sub-Contractor**

NYSERDA strongly encourages the use of other 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 Participating Contractor serving as a sub-contractor on a Program project may be subject to disciplinary action should the sub-contracted work not comply with BPI, required certifications, licenses, permits, and/or Program policies and standards.

### **Non-Participating Sub-Contractor**

It is the Participating Contractor's responsibility to make their sub-contractors aware that 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.

The primary Participating Contractor assumes all responsibilities for services and benefits provided through the Program by sub-contractors. The Primary Contractor shall ensure compliance with BPI, required certifications, licenses, permits and/or Program policies and standards.

### **Use of Sub-Contractors**

#### **(a) Documentation**

Any sub-contractor(s) utilized by a Participating Contractor shall be listed on the Program participant'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 sub-contracted work is funded or financed by the Program. In addition, the use of sub-contractors should be clearly explained to the Program participant prior to the start of work.

#### **(b) 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) for any sub-contractors who have provided services on Program projects.

**(c) Poor Performing Sub-contractors**

Chronic poor workmanship or unprofessionalism associated with a given sub-contractor identified through Program participant 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.

**(d) Past Performance**

The Participating Contractor shall not sub-contract with any Participating Contractor that is under suspension or former Participating Contractor that has been terminated from the Program, or any other NYSERDA program, without NYSERDA's prior written permission. An employee of a sub-contractor who has demonstrated unprofessionalism, unethical behavior or has exhibited poor workmanship on one or more past Program projects may be prohibited from working on Program projects. This includes any staff member associated with a former Participating Contractor who was under suspension or terminated from the Program, or any other NYSERDA program. These individuals shall not work on Program projects unless NYSERDA provides written permission.

**(e) Participating Contractor Payments to Sub-Contractor**

It is the Participating Contractor's responsibility to promptly pay any sub-contractors providing services on a Program project to ensure the sub-contractor does not place a lien on the Program participants' homes for lack of payment by the Participating Contractor. NYSERDA will not act as an intermediary between a Participating Contractor and a sub-contractor on a Program project. A Participating Contractor not providing payment for services rendered to a sub-contractor on a Program project may be subject to disciplinary action in the event this action discredits NYSERDA or the Program in any way.

## **Section 7.06 Proper Use of Program Marketing Material**

**(a) Required Program Material**

To ensure the Program participant is educated on the features and benefits of the Program and able to make informed decisions, the Participating Contractor shall distribute required consumer and Program information materials to the Program participant prior to contracting for Program related measures. Required Program materials are provided in the Contractor Resource Manual. It is required that Participating Contractors provide the Program participant with information regarding specific measures that require routine maintenance, such as high-efficiency heating equipment, to ensure the Program participant 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 only to be distributed by Participating Contractors. Any

Participating Contractor found to be providing Program marketing materials to a non-participating contractor for distribution to Program participants will be subject to disciplinary action. NYSERDA, at its discretion, may grant marketers and outreach providers operating on behalf of a Participating Contractor(s) permission to distribute program materials.

**(c) Website Content**

The Participating Contractor shall avoid publishing specific Program content and offerings and uploading copies of NYSERDA forms and applications on their individual company websites. Instead, Participating Contractors are encouraged to provide links directly to pertinent content, forms, and applications on NYSERDA's website to ensure the information provided is consistent and up to date for all interested parties.

Participating Contractors shall address any Programmatic changes that may affect the content on their websites 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 7.07 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 other 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 Section 11 of the Contractor Resource Manual.

**(c) Use of Program Reference**

Should the Participating Contractor no longer participate in the Program, they are

required to immediately inform NYSERDA and remove all references to NYSERDA, the Program, and Program Financing and incentives from the modeling software that generates their reports as outlined in Section 10.01 of this Agreement.

**(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 NYSERDA Program's platforms.

**Section 7.08 Program Participant Personal Private Information**

**(a) Program Communications**

All Participating Contractors and sub-contractors performing work in association with NYSERDA's Program are required to comply with the [NYSERDA External Contractor Data Security and Controls Policy](#). In general, when corresponding with Program participants, Program Implementation, and NYSERDA, use the NYSERDA External Contractor Data Security and Controls Policy to determine the type of Program participant information that can be shared based on the platform being used. To minimize the occurrence of incoming emails containing confidential information, please instruct Program participants to redact utility account numbers, social security numbers and bank account numbers if you are requesting documents containing this information. Participating Contractors who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.

**Section 7.09 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 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 a member of a Participating Contractor's staff. 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 participants 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 Participating Contractor shall protect, indemnify and hold harmless NYSERDA, its Program implementation contractors, and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York, resulting from, arising out of or relating to Participating Contractor's or its 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 Participating Contractor under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

## **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 certified per the requirements of Section 2.01 (a) of this Agreement.

#### **(b) Appropriate Certification(s) for Proposed Measures**

The Participating Contractor may only submit projects to the Program for which it has the necessary certifications or by using a sub-contractor who maintains the necessary credentials as identified by the Program in Section 2.01 (b) of this Agreement.

### **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 professional certification(s) as determined by the Program.

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

### **Section 8.03 Home Energy Assessment/Audit Process and Report**

#### **(a) Assisted Home Performance with ENERGY STAR Comprehensive Home Energy Assessments**

The Program offers moderate income applicants free comprehensive home energy assessments. Availability of free comprehensive energy assessments is subject to the 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 moderate rate Program participants with a finalized 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.

#### **(b) Residential Energy Audit Program**

In addition to the ability to offer free energy assessments to moderate income customers Participating Contractors also have the ability to offer free energy audits to customers with incomes above 80% of the Area Median Income under the Residential Energy Audit Program. The policies and procedures for participating in the Residential

Energy Audit Program can be found in Addendum XYZ of the Contractor Resource Manual.

#### **Section 8.04 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. Following the execution of this Agreement, Contractor performance will be evaluated at 6 months. Contractors not on pace to meet minimum production requirements will be required to work with their account manager and submit a work plan for meeting Program production requirements. A Participating Contractor that fails to meet the production requirement one year after the execution of this Agreement will be placed on probation for a period of 90 days. During that time the Participating Contractor 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 Section 10.01 for additional information about Program disciplinary designations.

#### **Section 8.05 Project Submittal Review, Work Stoppage, and Completion**

The Participating Contractor shall only submit work under the Program 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. 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. With the exception of EmPower Electric Reduction (direct install) projects, 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) submitted to the Program.

Projects started without Program approval must be submitted to the Program no later than 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 Project review and

approval 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 Program participant financing, as well as the value of the Program participant incentive and/or contractor incentive).

**(c) Work Stoppage**

If a Participating Contractor discovers a deficiency that prevents the energy efficiency work from being completed, the contractor will stop all work that is affected by the deficiency; notify the Program participant of the deficiency; explain that the energy efficiency work cannot resume until the deficiency is addressed; discuss restoration of the affected areas with the Program participant; and, if agreed to by the Program participant, 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.

For each project completed through the Program, the Participating Contractor shall submit all required documentation needed to process Program incentives and dispense finance payments. For AHPwES projects, all completion documents must be submitted to the Program within 90 calendar days following work scope approval. Project completion submissions not received by the Program within the 90-day approval timeframe may, at the sole discretion of NYSERDA, need to reapply for approval. For EmPower projects, Home Performance jobs must be completed within 120 days of Participating Contractor referral acceptance and Electric Reduction jobs must be completed within 60 days of Participating Contractor referral acceptance.

Participating Contractor agrees to complete all Program related work prior to submission of the invoice to NYSERDA. In the event that billing discrepancies are identified for work already paid for, NYSERDA reserves the right to withhold future payments due to the Participating Contractor until the discrepancies are resolved or request a check be submitted to the Program by the Participating Contractor for the overage. Invoicing for measures which have not been completed may result in immediate termination from the Program.

For all Program projects, all completion documents must be submitted to the Program within 30 days of completing work. 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 contractor incentive or Program participant 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 review of a submitted project. Similarly, a satisfactory job review does not imply approval of Program Financing or incentives.

## **Section 8.06 Project Minimum Requirements and Eligible Measures**

All projects measures submitted to the Program shall meet the requirements of the Eligible



Measures and Accessories list detailed in the Contractor Resource Manual.

### **Section 8.07 Pricing**

The Participating Contractors shall apply fair and reasonable pricing when 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 Financing or incentives or in cases that do not appear to be fair and reasonable, or for which requested documentation has not been provided.

### **Section 8.08 Low-Income Households**

Participating Contractors serving low-income households (households earning 60% or less of the State Median Income) must adhere to the following.

#### **(a) Electric Reduction and Home Performance Measures**

Participating Contractors providing low-income energy efficiency services will prioritize cost-effective Electric Reduction (ER) measures. ER measures include, but are not limited to, replacement of incandescent lighting with energy efficient LED lighting, replacement of refrigerators and freezers with more efficient appliances, and cost-effective conversions of electric clothes dryers or water heaters to natural gas.

Cost-effective Home Performance (HP) measures, such as air sealing and insulation, are also available through the Program. A full list of eligible measures and installation guidelines are available in the Contractor Resource Manual.

#### **(b) Referrals**

NYSERDA coordinates with utilities and other entities to receive referrals of low-income customers in need of energy efficiency services. NYSERDA will refer these customers to Participating Contractors for services. The Participating Contractor shall accept referrals from the Program, based upon the areas identified by the contractor in their signed Participating Agreement or subsequently communicated to Program Implementation Staff, and shall provide services to such leads in accordance with the provisions of this Agreement and the Contractor Resource Manual. Any changes to the Participating Contractor's service areas should be promptly communicated to Program staff.

Participating Contractors must make every effort to promptly pursue a referral and complete the necessary work. If the Participating Contractor fails to properly respond to a referral within 10 business days, the referral may be reassigned to another Participating Contractor by NYSERDA or its Program Implementers. Future referrals may be affected by a failure to promptly respond to referrals.

It is expected that the Participating Contractor will complete ER services within 60 calendar days and HP services within 120 calendar days; if services are not provided in a timely manner, and alternative production arrangements have not been agreed to, NYSERDA reserves the right to re-allocate incomplete work to another contractor.

NYSERDA will provide production goals for each approved Participating Contractor for a given production goal period. The Participating Contractor understands that NYSERDA

cannot guarantee funding for projects above the number of projects indicated in a production goal period. If it is apparent that the Participating Contractor is unlikely to meet their production goals during a given period, NYSERDA reserves the right to modify the Participating Contractor's goals at any time during the given period.

It is understood that during a Participating Contractor's normal course of business they may find a low-income customer in need of energy-efficiency services. In these situations, Participating Contractors may self-refer a project to the Program; however, it is the responsibility of the Participating Contractor to manage their workload and self-referrals so that they do not exceed their production target.

**(c) Limitations of Referrals**

NYSERDA has a defined budget to serve low-income Program participants and reserves the right to limit the number of contractors approved to provide programmatic services to low-income Program participants, and the number of projects assigned to approved Participating Contractors. Approval of this Agreement by NYSERDA does not guarantee that projects will be assigned to the Participating Contractor.

**(d) Pricing and Project Eligibility**

Participating Contractors shall adhere to the current pricing schedule for ER and HP measures installed on Program projects as outlined in Section 7 of the Contractor Resource Manual. This schedule is subject to change based upon 30 days written notice to Participating Contractors.

Participating Contractor shall not charge an income-eligible customer for any portion of a work scope approved for free services. For work scopes approved at partial incentive funding, Participating Contractors may not charge more than 50% of the total measure cost, unless otherwise approved by NYSERDA or the Program Implementor. Any direct charges to a landlord must be covered by a landlord agreement approved in advance by NYSERDA's Program Implementor.

When presenting the work scope to the low-income Program participant, the Participating Contractor must inform the Program participant of the services that are provided at no cost, and that the Program participant is under no obligation to agree to additional measures at partial or full cost in order to obtain free services.

**Section 8.09 Program Participant Contribution**

NYSERDA provides up to 100% of the cost of eligible work for income-qualified Program participants. The Program participant is responsible for any balance of work and the Participating Contractor must clearly state the Program participant's contribution on the contract. The Participating Contractors must not inflate costs to maximize program funding and must not change the required Program participant contribution. Participating Contractors found inflating costs or modifying the required Program participant contribution may result in disciplinary action in accordance with Section 10.01.

**Section 8.10 Measure Eligibility**

The Program will rely on the Eligible Measures list for determining eligibility for incentives and

Program Financing. These measures have been deemed by NYSERDA as meeting the program's requirements for program eligibility. 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 the Program implementor 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, 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 if NYSERDA determines a Participating Contractor has not strictly adhered to the terms and conditions of the Program for a project, any Program incentives paid to the Program participant and/or Participating Contractor on the project, shall be repaid to, or recaptured by, the Program from the Participating Contractor. Upon notice from NYSERDA, the Participating Contractor shall provide NYSERDA direct payment within 30 days for the identified outstanding value of any Program incentives paid on Projects that do not comply with Program terms, conditions, policies or procedures identified in this Agreement, the 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. While an income-eligible Program participant may decline in writing to accept free services through the low-income component, the Participating Contractor must inform the Program participant of their eligibility to receive free services, even if the Participating Contractor does not provide low-income services through the Program. The Participating Contractor understands that the Program monitors and maintains the same high quality of service for all Program participants 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 Mechanic's Lien**

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

### **Section 8.16 Dwellings Owned by Employees**

Participating Contractors are prohibited from providing energy efficiency services, accepting Program referrals or acting as a sub-contractor to another Participating Contractor on dwellings owned or occupied or by a Participating Contractor's employees, any principal, immediate family members, or associates with a financial interest in the Participating Contractor's business. In the event there is an existing relationship, as outlined above, with a Participating Contractor and an income eligible household, the household remains eligible to receive services through NYSERDA's programs; however, the services must be provided by a Participating Contractor with no existing relationship with the household.

### **Section 8.17 Stop Work Order**

NYSERDA may at any time, by written Order to the Participating Contractor/Vendor, require the Participating Contractor/Vendor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Participating Contractor/Vendor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Participating Contractor/Vendor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Participating Contractor/Vendor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- a) by written notice to the Participating Contractor/Vendor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Participating Contractor/Vendor, or
- b) terminate the Work covered by such order

If a Stop Work Order issued under this section is cancelled or the period of the Order or any extension thereof expires, the Participating Contractor/Vendor shall resume Work. An equitable adjustment shall be made in the delivery schedule and or the fee, if any, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- a) the Stop Work Order results in an increase in the time required for, or in the Participating Contractor/Vendor's cost properly allocable to, the performance of any part of this Agreement, and
- b) the Participating Contractor/Vendor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

Notwithstanding the provisions of this section, the maximum amount payable by NYSERDA to the Provider shall not be increased or deemed to be increased except by specific written amendment hereto.

## **Article IX. Quality Assurance**

The main goal of the Program Quality Assurance (QA) process is to verify that projects completed through 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 MIG.

The Participating Contractor shall not inhibit or discourage Program participants from participating in the Program QA process and shall make a good faith effort to facilitate this process. A Program participant 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 and its Program implementation contractors, upon request. This information may include, but is not limited to, 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 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) Provisional by Participation Level**

- a. **Home Performance Contractors-** Must have 3 project completions meeting minimum QA standards by the 6th inspected project or within one year. All project submissions are subject to manual review. After one year, or the 6<sup>th</sup> inspected project, whichever comes first, the Program will review Provisional Contractors not meeting the above requirements to determine future Program participation.
- b. **Audit Contractor-** Must have 3 audit reviews and/or project reviews meeting Program standards by the 6th reviewed audit or project or within one year. After one year, or the 6th review, whichever comes first, the Program will review Provisional Contractors not meeting the above requirements to determine future Program participation.

**(iii) Past Participants**

Contractors renewing their Participation Agreements who have not completed a minimum of 12 projects during the past 12 months may, at the Program's discretion, be re-designated as Provisional and be required to meet the above criteria to be considered "Full" status.

**(iv) 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.

**(v) 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 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, Program participant complaints, unprofessional behavior, or failure to meet minimum production requirements of the Program.

In addition to QA, contractor will be subject to Quality Control (QC) for in-progress work. QC inspections can include desktop reviews and/or in-person site visits.

**(b) Full**

A Participating Contractor who is not operating under any of the other status designations described herein, abides by the conditions of this Agreement and provides quality services utilizing industry best practices shall have the status designation of Full Status Contractor. Full Status Contractors are entitled to all applicable Program benefits. Full Status Contractors may have different QA/QC inspection rates based upon Program sub-status designations below:

**(i) Audit Contractor-Standard Rate**

- a. Target of 3 inspections per year or at least 10% of completed audits or projects on an annual basis.

**(ii) Home Performance-Standard Rate**

- a. Target of 3 QA inspections per year or at least 10-15% of completed projects, and 3 QC inspections or 10%, of in-progress projects on an annual basis.

**(iii) Home Performance-Reduced Rate**

- a. Target of 3 QA inspections or at least 5-10% of completed projects, and 3 QC inspections or 5-10% of in-progress projects on an annual basis. To be considered for a reduced-rate, contractor must have a minimum of 20 completed projects in each of the past 2 years with at least 3 QA scores per year and an average of 4.0 or higher.

**(c) Inactive**

Includes contractors voluntarily deciding to end participation in the Program and Contractors terminated by the Program for disciplinary reasons. A contractor with an 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.

- (i) Inactive-Voluntarily Withdrawal-** Contractors voluntarily deciding to end participation in the Program will be placed in Inactive status. To resume participation, the Contractor may return to the Program, at the Program's sole discretion, within 30 days without penalty, providing there have been no significant changes to the Contractor's staff or certifications. After 30 days the Contractor will need to apply to the Program as a new contractor and if accepted, will have a "Provisional" status.

- (ii) Inactive-Terminated-** Contractors designated with the 'Terminated' status are prohibited from participation in the Program for the remainder of the Participation Agreement term. A Terminated 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 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 websites, as applicable.

Customers with incomplete projects at the time of Contractor termination will be notified that the Contractor is no longer participating in the Program 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, a Participating Contractor who hires the officers, owners or other staff of a Terminated Contractor risks disqualification from the Program at NYSERDA's sole discretion. In the event a Terminated Contractor's company is sold to new owners, the company must reapply; the use of the terminated Company's name, or similar derivations, in Program activities will be allowed at NYSERDA's discretion. Nothing in this process relieves the Terminated Contractor of the responsibility to fulfill any remaining obligation to the Program, or Program participants.

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:

- a. Maintaining a suspended status for more than 30 days and is unresponsive to or failed to adequately fulfill the terms of their suspension
- b. Failure to maintain minimum credentials for participation
- c. Submits falsified documents or unauthorized signatures to the Program
- d. Commits illegal actions while participating in the Program
- e. 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 Participating Contractor into question
- f. Is in gross violation of Program standards
- g. Repeatedly bills for uninstalled measures
- h. Fails to meet the terms of the Provisional period

**(d) Disciplinary Action**

A Full Status Contractor who fails to comply with any of the terms of this Agreement or the Contractor Resource Manual, or who provides fraudulent or misleading Program documentation, is subject to disciplinary action. Participating Contractors under disciplinary action have been notified in writing by the Program and are under disciplinary action for a set time frame or until the conditions of their disciplinary action notice have been met.

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.

**(i) Probation**

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. Minimum Period of Performance-** A Probation period will last no less than 60 days with terms outlined in the disciplinary action letter to the Program.
- b. Program Benefits-** Under the Probation Status, the Participating Contractor will be eligible for all contractor incentives, its customers will have access to financing offered through the Program, and income-eligible households will be eligible to receive Program incentives.
- c. Quality Assurance/Quality Control (QA/QC)-** Under the Probation Status, the Participating Contractor May be subject to increased QA/QC inspection rates that, if applicable, will be defined in the terms of their disciplinary letter from the Program.

A Participating Contractor may be placed on Probation for any of the following reasons:

- a. 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 Program participant 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, failure to submit overpayment reimbursements in a timely manner, and not obtaining proper building permits.
- b. Failure to Maintain Credentials-** Contractor does not maintain the minimum credentials required for Program participation as outlined in Section 2.01.
- c. Minimum Production-** A Participating Contractor is not meeting the minimum production requirements of the Program.
- d. Failure to meet Quality Requirements-** Failure to consistently deliver completed projects which pass the QA standard required for 'Full' status.
- e. Health and Safety and other Critical Violations-** Failure to take effective corrective action on a critical deficiency.
- f. Unprofessionalism-** Contractors exhibits repeated unprofessionalism in interactions with Program Staff, Implementation Staff, or Program participants.
- g. Unresponsive to Open-Fail Report Resolution-** Three (3) or more Open-Fail reports that have not been responded to or remain unresolved for more

than 30 days.

- h. Program participant Complaints-** NYSERDA and its designees have received one or more valid Program participant Complaints per quarter, the Participating Contractor is unresponsive or slow in resolving Program participant issues, exhibits poor quality workmanship or unprofessional manner on one or more projects.
- i. 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.
- j. Failure to Follow Program Procedure-** The Participating Contractor continuously submits incorrect or incomplete documentation or requires an excessive amount of administrative or technical support.

While on Probation, the contractor must continue to put work through the Program and meet minimum production requirements. In the event a contractor is placed on probation and fails to meet the terms of the Probation within six months of the issuance date of the letter, the Program, at its discretion, may elect to Suspend or Terminate the Participating Contractor for failure to meet the terms of Probation.

**(ii) 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 into, the Program 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. With Program permission, a Suspended Contractor may be allowed to close out in progress Projects. Projects may be subject to increased QA/QC inspection rates that, if applicable, will be defined in the terms of their disciplinary letter from the Program. NYSERDA has sole discretion in determining the length of the Suspension Period. Grounds for suspension shall include, but are not limited to, the following:

- a. 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.
- b. Unresponsive-Other-** The Participating Contractor is unresponsive to addressing outstanding Program participant concerns, Corrective Action Reports, incentive over payment reimbursements or requests from Program or Program implementation contractors.
- c. 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 Program participants at risk. This includes but is not limited to poor or unclear contract documents, misrepresentation of available Program participant incentives, poor quality of work, repeated

submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, billing for uninstalled measures, performing work in municipalities they are not licensed to work in, and not obtaining proper building permits.

- d. Contractor Staffing-** The Participating Contractor has staffing changes or staffing certification status changes resulting in the contractor not maintaining the minimum Program certification requirements.
- e. 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 Program participant signatures, falsifying existing onsite conditions, submission of photo documentation that does not correspond to the project for which it was submitted.