



**EmPower New York
Appliance Vendor Agreement
For the Agreement Period of
July 1, 2019 - December 31, 2020**

Appliance Vendor:
(hereinafter "Vendor")

Street Address:

City: State: Zip:

County:

Primary Contact: Job Title:

Telephone Number: Email Address:

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

OR

Provide a service radius in miles from your location in the box below:

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

OR

I wish to serve a radius of _____ miles from the street address listed above.

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

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

clothes dryers or water heaters to natural gas. Home performance measures include, but are not limited to, blower-door assisted air sealing, attic, sidewall and basement insulation, and the repair or replacement of heating systems.

The role of the Vendor will be to replace inefficient refrigerators and freezers for low-income families as identified by the Program.

This Vendor Agreement (Agreement) sets out the terms and conditions under which Vendors may participate in the Program. Under this Agreement, Vendor agrees to accept referrals of income-eligible Program participants from NYSERDA's Program Implementer. NYSERDA agrees to provide Program and technical support for participating Vendors.

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

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

- Referrals of Program participants for installation of energy saving appliances.
- Program support and training on service delivery, reporting, and payment procedures;
- Access to NYSERDA's NY HP Portal to access Program participant project information;
- Prompt payment for eligible services provided under the Program;
- Quality Assurance (QA) and quality control with prompt feedback to the Vendor to ensure adherence to high standards of quality;
- Easy access to the Program Implementer, for prompt response to Program inquiries.

Prospective Vendors should review this document in its entirety before completing and submitting to the Program for review and consideration. Following the submission of an application package, NYSERDA will evaluate the provided documentation prior to considering an Agreement for approval. For both new applicants and returning applicants, key evaluation criteria include, but are not limited to the following:

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

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

- (i) Demonstration of the Vendor's ability to properly, and consistently, follow Program policies and procedures, and timely completion of work;
- (ii) Review of historic Vendor's QA scores;
- (ii) Satisfactory and professional interaction with Program staff, Program participants, other Program Contractors and Implementation Staff;
- (iii) Satisfactory record of fair and ethical business practices;
- (iv) Responsiveness to Program participant complaints, Implementation Contractor inquiries, and NYSERDA directives

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

1. Program Requirements

- A. The Vendor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified 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 Vendor 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 Vendor shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Vendor 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. The Vendor shall maintain Workers' Compensation covering the obligations of the Vendor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits. The Vendor must provide proof of Worker's Compensation upon request by NYSERDA.

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

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

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

- C. The Vendor shall have access to a computer with an operating system capable of running the required and necessary Program software. The Vendor 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 communications. The Vendor shall ensure the email address on file with the Program is current and must identify a Program contact. The Vendor shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary.
- D. The Vendor shall adhere to the pricing schedule of appliances and Program-approved models are included as Attachment A. This schedule is subject to change based upon 30-days written notice from the Vendor.
- E. Vendor shall accept referrals from the Program and shall provide services to such referral leads in accordance with the [2019-2020 NY Residential Existing Home Program Contractor Resource Manual](#) (Contractor Resource Manual) and this Agreement.

Vendor recognizes that referrals received from the Program constitute a benefit from NYSERDA and that the Vendor must make every effort to pursue a referral in a timely fashion. If the Vendor fails to properly respond to a referral within 30 days, the referral may be made to another participating Vendor and future referrals may be affected. Vendor shall invoice for all work within 30 days of completion of the appliance delivery.

- F. The Vendor 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 Vendor 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 Vendor

agrees such information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by the Vendor, its agents, employees, contractors, or professional advisors, other than is expressly required to implement its obligations under this Agreement.

- G. All Vendors 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. Vendors who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.
- H. Vendor shall maintain any relevant licenses as required by federal, State, county or municipal governments or any other governmental agencies for work in the trades it undertakes through this Program. Vendor shall produce evidence of current licensing upon request by NYSERDA or its Program Implementer.
- I. Vendor acknowledges that participation in the Program is voluntary, and NYSERDA or its Program Implementer may suspend or terminate Vendor's participation in the Program for any reason, including but not limited to, failure to maintain these standards, poor performance, or inappropriate conduct. In all cases involving termination of Vendor's participation, NYSERDA's written decision is final.
- J. Vendor shall not knowingly employ as a sub-contractor any firm that has been suspended or terminated from this Program or any other NYSERDA program(s) 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.
- K. NYSERDA reserves the right to make changes to the Program upon notice to the Vendor. Programmatic changes announced through Program Announcements will supersede policies and procedures in this Agreement and/or 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>.
- L. It is the Vendor'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. Vendor acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will jeopardize reimbursement for costs incurred under this Program.

- M. Vendor agrees to perform appliance replacement prior to invoicing NYSERDA for the service. In the event that billing discrepancies are identified for work already paid for, NYSERDA reserves the right to withhold comparable amounts of payments owed to the Vendor until the discrepancies are resolved. Billing for appliance installations which have not been completed may result in termination from the Program.
- N. If Vendor does not comply with Program guidelines on a particular job, NYSERDA may not approve payment for that job.
- O. It is the sole responsibility of the Vendor and its sub-contractors to obtain and comply with the terms of any required permits for installing appliances through the Program. The Vendor shall produce evidence of applicable permits upon request by NYSERDA or its Program Implementer.
- P. A non-participating sub-contractor of a Vendor shall not represent itself as a participant in the Program or as able to offer Program services and benefits, for the purpose of executing the sale of a non-Program project. Additionally, Vendor shall not permit any sub-contractor to represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- Q. The Vendor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Vendor's obligations under this Agreement. The obligations of the Vendor under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.
- R. The Vendor shall not represent that the services it provides, or the materials it uses, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- S. The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and Vendor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, vicarious liability, professional liability coverage or indemnification. Neither Vendor nor its employees shall represent themselves as employees of or certified by the State of

New York, NYSERDA or NYSERDA's Program Implementer. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

- T. Vendor agrees that if the personnel furnished by Vendor are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, Vendor acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. Vendor agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.
- U. Notification of Claims/Events. The Vendor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, the Vendor and/or a member of a Vendor's staff. Accordingly, the Vendor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon the Vendor'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.
- V. 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.

2. Project Requirements

- A. All refrigerators and freezers installed as part of this Agreement shall be brand new and ENERGY STAR® rated. All refrigerators and freezers installed must include:
 - a. Controls that are understandable and easy to use
 - b. Levelers on front legs.
 - c. Shelf adjustability.
- B. All refrigerators installed must include:
 - a. Automatic defrost
 - b. Full shelf in freezer
 - c. Separate freezer control
- C. The Vendor shall provide the Program participant with a written warranty of labor and materials. Refrigerators and freezers shall carry a minimum one-year parts and labor warranty from the Vendor, valid from the date the delivery is completed. After one year, the Vendor must honor any valid manufacturer's warrantee for the installed appliance. In the event labor is not covered during

this period, the Vendor is expected to charge the Program participant fair market rate for any needed repairs. Damaged or defective items, as determined by the Implementation Contractor, shall be replaced at no cost (including shipping) to the Program. For appliances installed not meeting Program requirements, as identified through a Program participant concern submission or QA inspection, the warranty will be extended one year once the Vendor has remediated all deficiencies to Program/manufacture's standards.

- D. The Vendor must provide the Program participant with a reasonable time frame for delivery. A courtesy phone call must be made if they are running more than one hour past the scheduled delivery time.
- E. Vendor must maintain satisfactory and professional Program participant interaction, treat Program participants fairly, and shall provide timely completion of work and response to Program participant complaints and NYSERDA directives.
- F. Deliveries must include complete installation into the home, including placement into the designated space and leveling of the new appliance. All refuse related to delivery, including appliance packing materials, must be removed at the time of installation.
- G. The Vendor must make sure that all units are operational before the delivery crew leaves the home.
- H. Vendor shall provide all Program participants with Vendor contact information, and all included manufacturer's documentation that came with the appliance, which at a minimum shall include the manual(s).
- I. Vendor will obtain from the Program participant a delivery receipt signed by the Program participant and identifying the make and model of the appliance installed, as well as the makes and models of appliances removed. It is expressly understood that NYSERDA and its Program Implementer will not approve payment for a job without a delivery slip, signed by the Program participant, identifying the make and model of the appliance(s) installed.
- J. Following the installation of an appliance, the Vendor must make repairs or provide financial compensation within seven working days for any damage done to either the appliance or the home during the installation.
- K. Vendor shall remove old refrigerators and freezers from Program participant's home at the time of installation. The Vendor is responsible to legally dispose of all replaced refrigerators and freezers. All refrigerators and freezers must be dismantled to prevent reuse and parts must not be sold or distributed for reuse. Refrigerants, including but not limited to chlorofluorocarbons (CFC's), hydro chlorofluorocarbons (HCFC's), or 134A (HFC's), must be removed in accordance

with Section 608 of the Clean Air Act and 40 CFR Part 82. Any capacitors or ballasts that may contain Polychlorinated-biphenyls (PCB's) must be removed and disposed in a manner consistent with federal, state, and local laws. All capacitors must be physically removed and examined. Any capacitor that clearly says "NO PCBS" can be disposed of in a manner consistent with generally accepted industry practices. If the words, "NO PCBS" do not appear on the label, the capacitor contains PCBs and must be incinerated by an EPA approved incineration site or put in a landfill that is permitted to legally handle PCBs. All refrigerators and freezers must be sent to a shredding or baling facility for final destruction and recycling of materials.

- L. If, during the warranty period, the unit fails three times for a problem originating from the manufacturer and/or repair, the Vendor must replace the appliance at no cost to the Program participant.
- M. The Vendor must notify the Program Implementer immediately once they have been made aware of a manufacturing defect identified during the warranty period and assist in ensuring that the manufacturer proactively fixes the defect before the unit fails.
- N. If a refrigerator or freezer fails due to manufacturing defects during the warranty period, the Vendor must reimburse the Program participant for the cost of food spoilage due to the appliance failure.
- O. If the Program participant has to wait more than three days for a warranty repair part for an appliance provided by the Vendor and the appliance is inoperative, the Vendor must provide a loaner to the family.
- P. If Vendor becomes involved in a dispute with a Program participant over business practices, Vendor shall work with the Program Implementer to resolve the dispute amicably.
- Q. NYSERDA, its Program Implementer or QA Contractor may conduct random field inspections of work that has been performed through the Program as part of this Agreement. Vendor recognizes NYSERDA's commitment to inspect at least 10% of all jobs performed by the Vendor under the Program.
- R. Vendor, upon request of NYSERDA, Program Implementer, or QA Contractor, and at no additional cost to the Program participant, shall make reasonable repairs or corrections as required. This provision survives termination of the Agreement.
- S. Vendor shall maintain effective procedures for QA, for resolution of Program participant complaints or disputes, and for response to Program participant emergencies. Vendor agrees to make these procedures available to NYSERDA or its Program Implementer for review and approval upon request.

