

Comfort Home,
Green Jobs - Green New York (GJGNY)
Residential Financing,
NY Residential Existing Homes, and
Residential Energy Assessment Programs

Participation Agreement

For Residential Contractors

September 2024



NYSERDA

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Summary of Changes

Revision Date: January 24, 2024

Summary of Revisions Made:

Section 3.11 Code of Conduct added.

Section 6.6 iii. Participating Contractor Attribution logo request link updated to <https://web.cvent.com>

Revision Date: May 2024

Summary of Revisions Made:

Section 1.1 Program Descriptions- Removed Companion Loan Information, Removed NYS Clean Heat and PSEG Long Island from Participating Contractor definition.

Section 2.2 Added: NYSERDA may deny approval of a Residential Contractor Application for any reason including failure to maintain Program standards, poor performance, unresponsiveness, or inappropriate behavior.

Section 3.9 Added: The policy shall include protocols for a timely response, identification of responsible parties, documentation of corrective actions, results, and a means of identifying and addressing systemic issues.

Paragraph 2 added “and cannot contain mandatory arbitration clauses. The contract must include the following holder-in-due course term: “Any holder of a consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods and services obtained pursuant hereto or with the proceeds hereof, recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.”

Section 3.11 Added: Participating Contractor is familiar with and will comply with NYSERDA’s Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement,¹ including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA;

¹ The Contractor Code of Conduct can be found at <https://www.nyserda.ny.gov/About/Board-Governance>

In addition, the Participating Contractor must follow the policies and procedures found on the Doing Business with NYSERDA webpage at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

Section 4 Agreement Terms- Paragraph 1, removed “deny an Applicant’s approval or”

Section 6.7-2 Updated to: All Participating Contractors and Subcontractors performing work in association with NYSERDA’s programs are required to comply with [New York State Information Classification Policy \(NYS-S14-002\)](#). In addition, the [New York State Information Security Policy \(NYS-P03-002\)](#) sets forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment to achieve the State's information security objectives.

Section 7.2 Added : “To the greatest extent practicable, all equipment and products purchased with funds made available for the Program should be American made.”

Section 7.6 Changed to: “The Participating Contractor 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 Customer and/or Participating Contractor on the project, or any Program incentives due and owing to the Contractor under the Program, shall be repaid to, or recaptured by, the Program from the Participating Contractor.”

Revision Date: August 2024

Summary of Revisions Made:

Section 3.9 Updated to: NYSERDA requires the Participating Contractor maintain a dispute resolution policy on file. The policy shall include protocols for a timely response, identification of responsible parties, documentation of corrective actions, results, and a means of identifying and addressing systemic issues. The policy shall not contain mandatory arbitration clauses. The policy shall require mediation if disputes cannot be settled amicably. If a Participating Contractor, or its Subcontractor, becomes involved in a dispute with a Customer over business practices, the Participating Contractor shall work to settle the dispute amicably utilizing the Participating Contractor’s customer dispute resolution policy.

Section 6.1 Added: “Except for Residential Energy Assessment projects, contractors are required to have a contract with the customer for all work being performed under the Program and are required to submit a copy of the contract to the Program” and “Where EmPower+ funding is covering the entire cost of the project, contracts with the customer should contain the following statement: “The contract price is being paid by NYSERDA through the EmPower+ program, for and on behalf of the customer.”

Revision Date: September 2024

Summary of Revisions Made:

Section 6.1 Added points: If the Empower+ project is fully funded by NYSERDA. If the Empower+ project is partially funded by NYSERDA. If the Comfort Home project is fully funded by NYSERDA. If the Comfort Home project is partially funded by NYSERDA.

Definitions

Certificate of Completion: The Certificate of Completion, which is executed by a Customer attesting that all work has been completed pursuant to the contract.

Customer: A New York State homeowner or renter who may participate in a NYSERDA program or is a current or former participant in a program.

Implementation Contractor: Organization working under contract with NYSERDA to provide administrative and support functions such as project approvals, technical support, loan origination, loan servicing, reporting, invoicing, and installation verification.

Participation Agreement: This Participation Agreement (Agreement), which establishes the terms and conditions under which NYSERDA-qualified Participating Contractors may offer program incentives and/or financing to qualified Customers in New York State.

Participating Contractor: Participating Contractors are independent contractors approved by NYSERDA to offer energy assessments, installations, program incentives, and/or financing.

Program: Refers to one or more of the NYSERDA programs listed on the front page of this Agreement in which the undersigned Contractor has qualified to work.

Program Manual: Refers to the relevant manual for each program that specifies the operating procedures, program-specific rules and eligibility, and technical requirements. Program manuals differ per program; no program's manual applies to or controls another program unless so specified.

Residential Energy Assessment: An energy assessment conducted by a Participating Contractor in accordance with the policies and procedures detailed in the Residential Energy Assessment Program Manual and any Residential Energy Assessment Program announcements.

1 General Information

This Agreement covers the Programs listed on the cover page of this Agreement. This Agreement binds the Applicant/Participating Contractor to the terms and conditions listed here, as well as those in the respective Program Manuals. An Applicant contractor is considered and referred to as a “Participating Contractor” when this Agreement is submitted to and accepted by the New York State Energy Research and Development Authority (NYSERDA). The Participating Contractor will be notified via email when its application is approved.

By its signature on the Residential Contractor Application, each Applicant understands and agrees to the terms and conditions outlined in this Agreement and any program announcements distributed and/or posted by NYSERDA or any Implementation Contractor once the application has been approved.

1.1 Program Descriptions

Comfort Home Pilot Program– In this program, homeowners work with Participating Contractors to install energy efficiency envelope improvements (e.g., air sealing, insulation, windows) and to learn about options for heat pumps after their homes’ envelopes have been improved.

Green Jobs – Green New York (GJGNY) Residential Financing Program – This program offers GJGNY Loans (Smart Energy, On-Bill Recovery, and Renewable Energy Tax Credit Bridge Loan), which are unsecured loans up to twenty-five thousand (\$25,000) dollars for one-to-four family residential energy improvements or renewable energy systems with a term not to exceed fifteen (15) years. Participating Contractors in this program are also required to execute a separate participation agreement with NYSERDA’s loan originator.

A Participating Contractor approved to participate in the NY Residential Existing Homes Program or NYSERDA Comfort Home Pilot Program may offer GJGNY Residential Financing through those programs. All other Contractors must apply separately and are bound by this Agreement and the GJGNY Residential Financing Program Manual.

NY Residential Existing Homes Program– This program includes EmPower+ and provides low- and no-cost services to income-eligible Customers.

Residential Energy Assessment Program – This program provides no-cost energy assessments to homeowners across the state, offered through Participating Contractors.

2 General Application Information

2.1 Application Requirements

The Applicant shall provide NYSERDA all required information in accordance with the applicable Program Manual(s) when submitting the Residential Contractor Application, as requested by NYSERDA, or when there are changes or updates to the information previously provided.

2.2 Evaluation Criteria for Contractor Acceptance

NYSERDA will evaluate the information provided on the Residential Contractor Application and review all submitted documentation prior to approving an Agreement via electronic mail notification. NYSERDA will not make a determination on a Residential Contractor Application until all the requested information is received by NYSERDA from the Applicant. NYSERDA may deny approval of a Residential Contractor Application for any reason including failure to maintain Program standards, poor performance, unresponsiveness, or inappropriate behavior. The decision to approve a Residential Contractor Application is at NYSERDA's sole discretion.

3 Participation Requirements

By executing the Residential Contractor Application, the undersigned Participating Contractor agrees to the following terms, to become effective upon NYSERDA approval.

3.1 Requirements

The Participating Contractor shall meet the requirements outlined in the Program Manual(s). Residential Contractor Applications will be reviewed for completeness and meeting the participation terms outlined in the respective Program Manuals. 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 Energy Assessments or energy efficiency/clean energy work through the Program, the Participating Contractor must employ staff, or use Subcontractors, with the required certifications outlined in the applicable Program Manual(s). NYSERDA may modify or update these requirements at any time.

3.2 Certified Staff

Work must be done in accordance with the requirements specified in the applicable Program Manual(s) by individuals maintaining the proper credentials where applicable. It is the Participating Contractor's responsibility to ensure that work performed in each Program adheres to the technical standards established and maintained by BPI or the credentialing organization for each certification and meets the Program requirements outlined in the Program Manual.

3.3 Licensing

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

3.4 Permits

It is the sole responsibility of the Participating Contractor and its Subcontractors to obtain and comply with the terms of any required permits for installing measures or conducting Energy Assessments prior to the start of work. The Participating Contractor shall produce evidence of applicable permits upon request by NYSERDA or an Implementation Contractor. Failure to comply with permitting requirements may result in disciplinary action or termination from the Program(s).

3.5 Codes

All Participating Contractors and any Subcontractor retained by a Participating Contractor must perform 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.

3.6 Health and Safety

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

3.7 Insurance

The Participating Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified 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 Subcontractor agreements for any Subcontractor, and to request the identity of all participating individuals.

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 Employers Liability, and Disability Benefits coverage as required by New York State. The Participating Contractor shall maintain Workers' Compensation covering the obligations of the Participating 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 Contract must provide proof of Workers' Compensation upon request by NYSERDA; and/or
3. Professional Liability Insurance. Applicable for Participating Contractors that only provide Energy Assessment services and do not complete installation work. For these business models, the Participating Contractor shall carry professional liability insurance (errors and omissions) with a minimum limit of \$1,000,000.

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.

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 this Agreement or NYSERDA.

3.8 Warranty

The Participating Contractor shall provide the Customer a written warranty of labor and materials valid for a minimum of one (1) year from the date that final documentation is submitted 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 Customer. For installed measures not meeting Program requirements, as later

identified through a Customer concern submission, or confirmed through a Quality Assurance (QA) field inspection, the warranty shall, at the Participating Contractor's expense, be extended one year from the date the Participating Contractor completed remediation to program satisfaction for all confirmed deficiencies.

3.9 Customer Issues and Dispute Resolution

NYSERDA requires that the Participating Contractor maintain a dispute resolution policy on file. The policy shall include protocols for a timely response, identification of responsible parties, documentation of corrective actions, results, and a means of identifying and addressing systemic issues. The policy shall not contain mandatory arbitration clauses. The policy shall require mediation if disputes cannot be settled amicably. If a Participating Contractor, or its Subcontractor, becomes involved in a dispute with a Customer 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 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 Implementation Contractor(s) harmless from any legal action arising from work associated with the Program. Failure to resolve Customer issues in a timely manner may result in disciplinary action.

3.10 Financing & Incentives

NYSERDA administers certain financing and incentive programs, and the Participating Contractor shall comply with all requirements per the applicable Program Manual(s).

3.11 Code of Conduct

Participating Contractor is familiar with and will comply with NYSERDA's *Code of Conduct for Contractors, Consultants, and Vendors* with respect to the performance of this Agreement,² including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA;

² The Contractor Code of Conduct can be found at <https://www.nyserda.ny.gov/About/Board-Governance>

In addition, the Participating Contractor must follow the policies and procedures found on the Doing Business with NYSERDA webpage at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

4 Agreement Terms

The Contractor acknowledges this Agreement is completely voluntary. NYSERDA may 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 Participating Contractor's participation status, NYSERDA's written decision is final.

4.1 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.

4.2 Program Changes

NYSERDA reserves the right to make changes upon notice to the Participating Contractor. Programmatic changes announced through Program announcements will supersede policies and procedures in this Agreement and the applicable Program Manual(s). Such notifications shall be communicated via email and posted in accordance with the applicable Program Manual(s). 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 changes or responsibility changes.

4.3 Termination

NYSERDA may terminate this Agreement and therefore the Participating Contractor's program participation for reasons including but not limited to failure to maintain standards, poor performance, unresponsiveness, termination, or poor performance in any NYSERDA program(s), inappropriate behavior, or other reasons. In all cases involving a Participating Contractor's participation status, NYSERDA's written decision is final.

4.4 Post Termination Obligations

Articles V, VIII, IX, X as well as sections 3.07(c) and 3.09 shall survive termination of this Agreement.

5 Contractor Relations with Customers

5.1 Customer Inquiries

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

5.2 Leads

Participating Contractors are expected to generate their own leads to provide services. In the case that NYSERDA or the Implementation Contractor sends a lead to a Participating Contractor, they must accept the lead and make every reasonable effort to encourage Customer participation in accordance with the applicable Program 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 the applicable Program Manual.

5.3 Timely Communication

Participating Contractors shall ensure prompt and accurate reporting of all project completions as defined in the Program Manual. Participating Contractors shall respond to inquiries from Customers, NYSERDA staff, and Implementation Contractors in a prompt, professional, and courteous manner.

6 Business Practices

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

6.1 Contract Compliance

Except for Residential Energy Assessment projects, contractors are required to have a contract with the customer for all work being performed under the Program and are required to submit a copy of the contract to the Program. 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 requirements detailed in the applicable Program Manual(s).

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 Participating Contractor must be clear and legible and include line-item detail for each installed measure, including nameplate and efficiency information and cannot contain mandatory arbitration clauses.

The contract must include the following holder-in-due course term: “Any holder of a consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods and services obtained pursuant hereto or with the proceeds hereof, recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.”

Upon request by NYSERDA or Implementation Contractor staff, the Participating Contractor shall provide additional details regarding contractual terms and costs for the purposes of project review. Where EmPower+ funding is covering the entire cost of the project, contracts with the customer should contain the following statement: “The contract price is being paid by NYSERDA through the EmPower+ program, for and on behalf of the customer.”

- If the Empower+ project is fully funded by NYSERDA:
 - The contract price is being paid by NYSERDA through the EmPower+ program, for and on behalf of the customer.
- If the Empower+ project is partially funded by NYSERDA:
 - Part of the contract price is being paid by NYSERDA through the EmPower+ program, for and on behalf of the customer.

- If the Comfort Home project is fully funded by NYSERDA:
 - The contract price is being paid by NYSERDA through the Comfort Home program, for and on behalf of the customer.
- If the Comfort Home project is partially funded by NYSERDA:
 - Part of the contract price is being paid by NYSERDA through the Comfort Home program, for and on behalf of the customer.

6.2 Professional Conduct and Courtesy

The Participating Contractor shall treat all Customers fairly, provide accurate information on all available Program Financing and Incentives and deliver promised services in a timely, competent, professional, and reasonable manner. Participating Contractors shall conduct themselves in a professional, respectful, and reasonable manner at all times when interacting with Customers, NYSERDA staff, and Implementation Contractors. Participating Contractors shall not engage in behavior that adversely impacts NYSERDA, Implementation Contractors, or other Participating Contractors, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

6.3 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.

6.4 Past Performance

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

6.5 Program Representations

The Participating Contractor shall not engage in unfair or inaccurate representations of NYSERDA and its programs, the Implementation Contractors, other Participating Contractors, or affiliates.

1. Participating Contractor

The Participating Contractor shall properly and accurately represent the relationship of the Participating Contractor and its Subcontractor(s) to the State of New York, NYSERDA, and NYSERDA's Implementation Contractors. This relationship shall be whether the Participating

Contractor currently meets participation requirements, acts as independent contractor, and voluntarily offers Program Incentives and/or financing.

The Participating Contractor shall not represent itself as working for, approved by, or certified by, the State of New York, NYSERDA or NYSERDA's 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 Implementation Contractors.

Participating Contractors are 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.

A Participating Contractor employing the services of Subcontractors shall ensure each Subcontractor adheres to the requirements of the Program Manual.

2. Participating Subcontractor

NYSERDA strongly encourages the use of other Participating Contractors for subcontracted work to ensure the installed work meets Program standards. Participating Contractors acting as a Subcontractor are expected to perform the work in a manner consistent with Program procedures and policy. Any deficiencies identified in subcontracted work, regardless of the Program participation status of the Subcontractor, are expected to be resolved by the Primary Participating Contractor in a timely manner through either the stated Subcontractor, alternative Subcontractor or directly. Any Participating Contractor serving as a Subcontractor on a Program project may be subject to disciplinary action should the subcontracted work not comply with BPI and other credentialing bodies, required certifications, licenses, permits, and/or Program policies and standards.

NYSERDA will not act as an intermediary between a Participating Contractor and a Subcontractor on a Program project.

3. Use of Non-Participating Subcontractor

It is the Participating Contractor's responsibility to make its Subcontractors aware that a non-participating Subcontractor shall not represent itself as able to offer a NYSERDA Program, including incentives or loans. Additionally, any Subcontractor 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 Implementation Contractors.

The Participating Contractor assumes all responsibilities for services provided by Subcontractors. The Participating Contractor shall ensure non-participating Subcontractor compliance with BPI and other credentialing bodies, required certifications, licenses, permits and/or program policies and standards.

4. Use of Subcontractors

i. **Documentation**

Any Subcontractor(s) utilized by a Participating Contractor shall be listed on the Customer's contract with the Customer and shall be submitted to the Program. In addition, the use of Subcontractors should be clearly explained to the Customer prior to the start of work.

ii. **Business Structure/Subcontractor 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 Subcontractors who have provided services on Program projects.

iii. **Poor Performing Subcontractors**

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

iv. **Past Performance**

The Participating Contractor shall not Subcontract with any Participating Contractor that it knows to be under suspension or that has been terminated from the Program, or any other NYSERDA program, without NYSERDA's prior written permission, which shall be given only in NYSERDA's sole discretion. NYSERDA may notify Participating Contractors if any such individuals appear on submitted staffing lists and reserves the right to seek exclusion of that individual, or other remedial actions such as, but not limited to, the imposition of additional oversight measures. An employee of a Subcontractor 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.

v. **Participating Contractor Payments to Subcontractor**

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

6.6 Proper Use of Program Materials

1. Marketing Materials

Program 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.

i. **Website Content**

The Participating Contractor shall avoid publishing specific Program content and requirements and uploading copies of NYSERDA forms and applications on their individual company websites. Instead, Participating Contractors shall 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 Program changes that may affect the content on their websites in a timely manner.

ii. **NYSERDA Logo Attribution Guidelines**

Participating Contractors may not use NYSERDA's logo; however Participating Contractors are authorized to use the NYSERDA Participating Contractor Attribution Logo subject to the restrictions in these guidelines. The guidelines serve to maintain the integrity of the NYSERDA brand, while providing Participating Contractors the opportunity to leverage their relationship with NYSERDA to engage customers.

Participating Contractors are not NYSERDA employees, partners, or representatives. Participating Contractors and their employees must identify themselves as representatives of the Participating Contractor's company, not as representatives of NYSERDA or as NYSERDA employee or NYSERDA contractor. Participating Contractors may use the Attribution Logo only under the following terms:

- Only approved Participating Contractors who have a current, executed Participation Agreement with NYSERDA are authorized to use the Attribution Logo.
- Participating Contractors can only identify themselves with the NYSERDA Participating Contractor Attribution Logo on marketing and promotional materials related to NYSERDA's Programs with current, executed Participation Agreements, such as agendas, newsletters, and event-related materials.
- The Attribution Logo may not be manipulated, stretched, or skewed in any manner and the proportions must be maintained at all times. The EPS version is a 4-color build vector file. If printing is done by a commercial printer and a spot-color logo file is required, please contact NYSERDA's Marketing Department to request that version. The Pantone color of the logo is PMS 307.
- If an alternate version of the logo is required, please include specific information about the layout space in your request, and we will provide the appropriate version.

There are two alternate versions of the NYSERDA logo: white-reversed and one-color black. NYSERDA does not allow other agencies to create alternate versions of our logo.

- NYSERDA requires that the logo be a minimum of 2.25" in width in order to ensure readability. If space requirements do not allow the logo to be 2.25", please contact Diane Welch at (518) 862-1090, extension 3276 to discuss options.
- The Attribution Logo may be used on the Participating Contractor's website only on pages that speak to the Programs but cannot be used in the Participating Contractor's overarching website shell.
- Participating Contractors cannot use the Attribution Logo on business cards, self-identifying items (e.g., shirts, pins), or for TV.

iii. Logo Request

For initial creation of the Participating Contractor Attribution logo, fill out the online logo request. You must submit a high-resolution vector eps of your logo to

<https://web.cvent.com>

For uses thereafter NYSERDA must review and approve any material containing the NYSERDA logo prior to publication or distribution, including print, web, or other media. To obtain approval, submit a low-resolution PDF to NYSERDA's Marketing Department.

Normal turnaround time is 3-5 days. <https://web.cvent.com>

iv. Logo Placement

NYSERDA requires a clear space around the logo at all times. The clear space is equal to the height of the first letter of the State name (N), in the size the logo is used. This clear space can be white space, background color, or paper color. Text, images, or other logos must not come closer to NYSERDA's logo.

v. Review and Approval

NYSERDA will review and approve any material containing the NYSERDA logo prior to publication including print, Web, or other media. Approval may be obtained through submission of a low-resolution PDF to NYSERDA's Marketing Department. If this option is not convenient, please contact Diane Welch at (518) 862-1090, extension 3276 to arrange alternate means of review.

vi. Contact

To Contact NYSERDA Marketing, please call or email Diane Welch at (518) 862-1090, ext. 3276 or diane.welch@nyserda.ny.gov, or Cory Nicosia at (518) 862-1090, ext. 3622 or email cory.nicosia@nyserda.ny.gov.

2. Use of Program Reference

Should the Participating Contractor no longer wish to participate in the Program, it is required to immediately inform NYSERDA and remove all references to NYSERDA, the Program(s), and Program Financing and Incentives from, including but not limited to, websites, marketing materials, and Energy Assessment reports.

6.7 Computer, Operating System, and Internet Access Requirements

1. Minimum Requirements

The Participating Contractor shall have access to a computer with an operating system capable of running any required and necessary Program software. The Participating Contractor shall have an active email account(s) with the ability to receive emails from NYSERDA, the Implementation Contractor(s), and Customers and check email on a regular basis for Program announcements and other communications. The Participating Contractor shall ensure any email addresses on file with NYSERDA are current and must identify a primary Program point of contact. 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.

2. Program Communications

All Participating Contractors and Subcontractors performing work in association with NYSERDA's programs are required to comply with [New York State Information Classification Policy \(NYS-S14-002\)](#). In addition, the [New York State Information Security Policy \(NYS-P03-002\)](#) set forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment to achieve the State's information security objectives. In general, when corresponding with Customers, Implementation Contractors, and NYSERDA, use the NYSERDA External Contractor Data Security and Controls Policy to determine the type of Customer information that can be shared based on the platform being used. To minimize the occurrence of incoming emails containing confidential information, please instruct Customers 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 policy will be subject to disciplinary action.

7 Project Requirements

The Participating Contractor acknowledges that failure to follow all relevant requirements and procedures as outlined in relevant Program Manuals and Program Announcements may result in loss of applicable Program incentives and/or disciplinary action.

7.1 Project Submission Requirement

The Participating Contractor shall submit according to the policies and procedures in this Agreement, applicable Program Manuals, and Program Announcements. The Participating Contractor shall only submit work under the organization name that is on file with NYSERDA in the executed Agreement.

7.2 Eligible Measures

Eligible Measures are home upgrade options that are eligible for Incentives or financing through NYSERDA's programs that are covered by this Participation Agreement, and meet the requirements stated in the relevant Program Manuals, and affiliated Program documents. To the greatest extent practicable, all equipment and products purchased with funds made available for the Program should be American made.

7.3 Pricing

Where Program pricing is not set, Participating Contractors shall apply fair and reasonable pricing when providing Program services, including subcontracted services, for the installation of work as detailed in the applicable Program Manual(s). NYSERDA reserves the right to request additional information from Participating 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.

7.4 Customer Contribution

The Customer is responsible for any balance of work scope costs and the Participating Contractor must clearly state the Customer's contribution, if any, on the contract. The Participating Contractors must not inflate costs to maximize program funding and must not change the required Customer contribution for loans; these actions may result in disciplinary measures.

7.5 Project Payment Processing

It is expressly understood that NYSERDA and the Implementation Contractor 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 applicable Program Manual(s).

7.6 Repayment or Recapture of Program Incentives

The Participating Contractor 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 Customer and/or Participating Contractor on the project, or any Program incentives due and owing to the Contractor under the Program, 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 applicable Program Manual(s), or Program Announcements. Failure to repay funds owed to NYSERDA may result in referral of the matter to the Attorney General's Office.

7.7 Stop Work Order

NYSERDA may at any time, by written Order to the Participating Contractor, require the Participating Contractor 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, 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 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, or within any extension of that period to which the parties shall have agreed, NYSERDA shall, by written notice to the Participating Contractor, either 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), or 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 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:

1. The Stop Work Order results in an increase in the time required for, or in the Participating Contractor's cost properly allocable to, the performance of any part of this Agreement, and
2. The Participating Contractor 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 Participating Contractor shall not be increased or deemed to be increased except by specific written amendment hereto.

8 Participating Contractor Status Designations

The Participating Contractor shall be classified in one of the participation status designations listed in the applicable Program Manual(s). Each status designation shall be subject to limitations or requirements associated with that classification, as detailed in the applicable Program Manual(s). 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.

9 Quality Assurance and Project Verification

The goals of the Quality Assurance (QA) and verification processes are: to verify that projects completed through the Programs meet all Program requirements while maintaining healthy and safe living conditions for the occupants; to identify Participating Contractors who regularly provide effective, high-quality services to their Customers, and to support their efforts; and 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 and verification policy and procedures documents are in the applicable Program Manual(s), 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 documents and BPI and other industry technical standards.

The Participating Contractor shall not inhibit or discourage Customer from participating in the QA and verification process and shall make a good faith effort to facilitate this process. A Customer 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. 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 Implementation Contractors, upon request. This information may include, but is not limited to, approved modeling software files, contracts, pictures, and installed product information.

10 Standard Terms and Conditions

10.1 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.

10.2 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, 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.

10.3 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.

10.4 Information

The Participating Contractor shall not use information obtained from NYSERDA or NYSERDA's designees in conjunction with the Programs 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, GJGNY Residential Financing or Customers that is non-public, confidential, or proprietary in nature. The Participating Contractor agrees such information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by the Participating Contractor, its agents, employees, contractors, or professional advisors, other than is expressly required to implement its obligations under this Agreement.

10.5 Indemnification

The Participating Contractor shall protect, indemnify and hold harmless NYSERDA, its 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 Subcontractor'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.



NYSERDA

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