

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

Participation Agreement

December 2024



NYSERDA
New York State Energy Research
and Development Authority

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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.

Revision Date: December 2024

Summary of Revisions Made:

Sections 3.8 and 3.9: Added “The obligations of the Participating Contractor under this Section shall survive any expiration or termination of this Agreement.”

Section 4.4: Removed Post Termination Obligations

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

Added Exhibit A “Standard Terms and Conditions for All NYSERDA Agreements” and Exhibit B “NYSERDA Prompt Payment Policy Statement”

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. The obligations of the Participating Contractor under this Section shall survive any expiration or termination of this Agreement.

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. The obligations of the Participating Contractor under this Section shall survive any expiration or termination of this Agreement.

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;

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.

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

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.

5 Contractor and Customer Interactions

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 Participating 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.

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.

EXHIBIT A

REVISED 1/24

STANDARD TERMS AND CONDITIONS

FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement to the extent applicable:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.
2. WAGE AND HOURS PROVISIONS. If this is an agreement for a public work covered by Article 8 of the Labor Law or a building service covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.
4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).
5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.
6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the

information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/about/foil2.html>) and NYSERDA’s Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.
 - a. FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.
 - b. PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.
9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise. Public
10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA’s written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.
13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.
14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.
15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

- a. The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- b. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- c. The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- d. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).
18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.
19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:
 - a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
 - b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
 - c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006.

Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology (“BART”). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at:

<https://www.dec.ny.gov/regs/2492.html>.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

EXHIBIT B

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability.

- a. The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.³
- b. This exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

504.2. Definitions. Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- a. "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.
- b. "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- c. "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.
- d. "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.
- e. "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.
- f. "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any

³ This is only a summary; the full text of Part 504 can be accessed at:
<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

g. (1) "Receipt of an Invoice" means:

- i. if the Payment is one for which an invoice is required, the later of:
 - a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or
 - b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.
- ii. if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

- h. "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

504.3. Prompt Payment Schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

504.4. Payment Procedures.

- a. Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

- b. NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:
 - 1. any defects in the delivered goods, property or services;
 - 2. any defects in the invoice; or
 - 3. suspected improprieties of any kind.
- c. The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.
- d. If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.
- e. In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

504.5. Exceptions and Extension of Payment Due Date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

- a. If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.
- b. If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or

documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

- c. If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.
- d. If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

504.7. Sources of Funds to Pay Interest. Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

504.8. Incorporation of Prompt Payment Policy Statement into Contracts. The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is

modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

504.10. Judicial Review. Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

- a. Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.
- b. With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.



NYSERDA
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and Development Authority

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