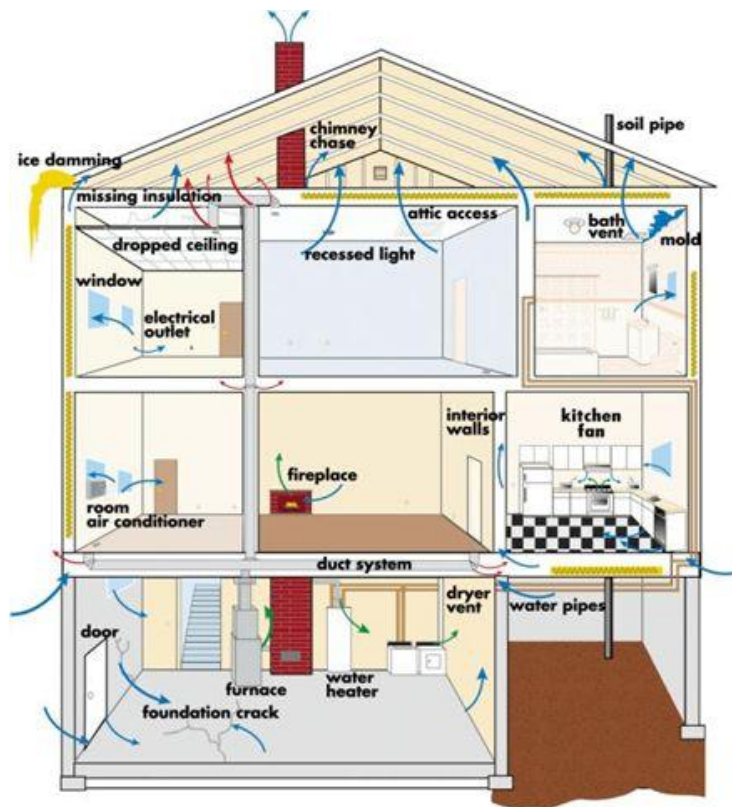




2011
Home Performance with ENERGY STAR[®]
Contractor
PARTNERSHIP AGREEMENT
Incorporating Green Jobs – Green New York



**2011 Home Performance with ENERGY STAR[®]
Contractor Partnership Agreement
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2011 Home Performance with ENERGY STAR® Contractor Partnership Agreement Incorporating Green Jobs – Green New York

The New York State Energy Research and Development Authority (NYSERDA) offers the Home Performance with ENERGY STAR Program (hereinafter referred to as the “Program”) to improve the energy performance, durability, comfort and safety of existing one- to four-family residential housing throughout the New York Home Performance with ENERGY STAR Market Regions.

The Green Jobs – Green New York (GJGNY) legislation signed into law October 2009 requires NYSERDA to provide energy efficiency services in all regions of the state. NYSERDA will deliver GJGNY services to owners of 1-4 unit residential buildings through the Home Performance with ENERGY STAR Program. These services include free and reduced cost audits and low-interest rate loans through a Revolving Loan Fund. Information on these new GJGNY components of Home Performance with ENERGY STAR are described in the Contractor Resource Manual.

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

The Program is administered by NYSERDA in cooperation with the U.S. Environmental Protection Agency (EPA), the Building Performance Institute (BPI), and a network of participating lenders. NYSERDA offers a comprehensive assistance package to both consumers and Partners that is designed to increase awareness of, and demand for, building performance contracting while simultaneously establishing an infrastructure of trained and certified technicians, and accredited contractors, to deliver such services.

This Partnership Agreement (“Agreement”) establishes the terms and conditions for contractors to participate in the Program. A contractor or applicant is considered a “Partner,” and referred to as “Partner” hereinafter, only when the Agreement is fully executed by NYSERDA.

NYSERDA will evaluate the application prior to executing an Agreement. Key evaluation criteria include but are not limited to: the applicant’s commitment to ethical business practices, knowledge of advanced building science methods, the ability to operate a residential contracting business within New York State, and if applicable, the past performance of the applicant in the Program (i.e., the quality of workmanship observed through the Program’s Quality Assurance (QA) / Quality Control (QC) processes, willingness to resolve deficiencies discovered during QA inspections), and compliance with the terms of this Agreement. Each Partner shall also commit to promoting the Program and its mission of improving the energy performance, durability, comfort, and safety of existing one- to four-family residential housing, as defined by the Program.

Under this Agreement, Partners contract directly with Homeowner(s) of existing one- to four-family residential buildings (“Homeowner”) to provide advanced building performance services that comply with Program requirements and standards. In accordance with Program rules, NYSERDA agrees to provide technical, financial, and marketing support to Partners. Additionally, NYSERDA agrees to provide financial assistance to the Homeowner for the installation of Eligible Energy Efficiency Measures by a Partner.

This Agreement is completely voluntary and may be terminated with written notice at any time or for any reason by either NYSERDA or the Partner.

Services that NYSERDA will make available to support the Partner include the following:

- Limited financial assistance for NYSERDA approved training and continuing education;

- Financial assistance to offset the cost of BPI Certification and Accreditation, which is a requirement to participate in the Program;
- Financial assistance to reduce the cost of diagnostic equipment and approved modeling software - required by NYSERDA for participation in the Program;
- The opportunity to respond to leads generated from NYSERDA's large-scale public awareness campaigns and the residential programs website - www.GetEnergySmart.org;
- Exclusive access to provide consumer incentives offered through the Program, i.e., Home Performance with ENERGY STAR Financing, 10% High Efficiency Measure Incentive and the Assisted Home Performance Subsidy (for income qualified Homeowners and renters of one- to four-family residential dwellings);
- Incentives that reward more comprehensive Program projects by encouraging cooperative efforts between Partners;
- Use of approved NYSERDA marketing materials which can be customized to include the Partner's logo and other company information;
- Opportunities to participate in other NYSERDA pilot initiatives (i.e., programs, studies); and
- Cooperative advertising incentives to assist the Partner with marketing efforts that support the Program objectives.

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

The Program is intended to incentivize the installation of eligible measures designed to increase the energy efficiency of existing buildings; the Program does not offer financial incentives for projects that include additions, gut rehabilitation, substantial renovations, the conversion of unconditioned space into conditioned space, or for energy related improvements that are subject to state or local building code.

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.

NYSERDA reserves the right to make changes to the Program upon notice to the Partner. Such notification shall be by e-mail and posting of the Program Announcement on www.GetEnergySmart.org.

Articles IV through VII and Section 2.06 and 2.07 shall survive termination of this Agreement.

Article I. General Application Information

The Partner shall provide NYSERDA the information below when submitting the initial Agreement application, as requested by NYSERDA, or when there are changes or updates to the information previously provided.

- Legal Name and address of company, or any other names used (i.e., dba, etc.)
- Telephone number, fax number, e-mail address
- Name(s) and title(s) of individual(s) authorized to represent the firm
- Federal Employer Identification Number
- Year firm was established
- Name and address of parent company (if applicable)
- Name and address of BPI Accredited firm/location
- Date firm established BPI Accreditation by location

- Staff affiliation with NYSERDA Residential Programs
- Indication of minority and/or women owned business
- BPI identification numbers

Article II. Partnership Requirements

Section 2.01 BPI Accreditation

The Partner shall obtain and maintain BPI Accreditation. By signing this Agreement, the Partner authorizes NYSERDA to share and obtain information with and from BPI for the purpose of verifying certifications, accreditation, and conducting Quality Assurance and Quality Control.

Section 2.02 BPI Certified Professionals

(a) Technical Standards

The BPI Certified Professional(s) employed by a Partner shall adhere to the technical standards established and maintained by BPI for each certification.

(b) Adequate Number of BPI Certified Professionals on Staff

The Partner is required to employ adequate BPI Certified Professionals to serve the counties and Market Regions (“Market Region(s)”) designated on the signature page(s) of this Agreement.

(c) Notice of BPI Certified Professionals

The Partner shall provide NYSERDA written documentation that identifies each BPI Certified Professional, with designations, for each company location providing Program service. As an ongoing requirement, the Partner shall immediately inform the Program of any change to the Certified Professionals on staff.

(d) Continuing Education Units/Credits

The Partner shall ensure that each BPI Certified Professional on staff receives, at a minimum, training that is compliant with BPI’s continuing education requirement.

Section 2.03 Application Submittal/Execution verification

(a) Submit Partnership Agreement Application to NYSERDA

Read, agree to the terms, sign, and submit the completed Contractor Partnership Agreement Signature Form to NYSERDA at the address provided on the Signature Form. NYSERDA will only accept the original signed document. Signature Forms sent via fax, e-mail, or other electronic communication will not be accepted.

(b) Receive Notification from NYSERDA that the Partnership Agreement has been Fully Executed

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

Section 2.04 New York Home Performance with ENERGY STAR Market Regions

The Partner shall dedicate a different BPI Certified Professional for each Market Region in which it chooses to operate. The number of Market Regions a contractor may offer Program services shall be determined at the sole discretion of NYSERDA. The Partner shall only offer Program services in Market Regions where it has a fully executed Partnership Agreement on file with NYSERDA. The Partner shall not offer or provide Program incentives in Market Regions where it does not have a fully executed Agreement with NYSERDA. The Partner may submit a request to provide services to additional counties outside their current Market Regions. The decision to allow a Partner to expand their Program service territory is at the sole discretion of NYSERDA.

Section 2.05 Licensing

It is the sole responsibility of the Partner and its subcontractors to obtain and maintain any required federal, state, county, or municipal government licenses or licenses required for installing eligible

measures through the Program. The Partner shall produce evidence of current licensing upon request by NYSERDA or its Program Implementer.

Section 2.06 Permits

It is the sole responsibility of the Partner and its subcontractors to obtain and comply with the terms of any required permits for installing Eligible Measures through the Program. The Partner shall produce evidence of applicable permits upon request by NYSERDA or its Program Implementer.

Section 2.07 Insurance

The Partner shall maintain general liability insurance coverage of at least \$1 million and produce evidence of current coverage upon request by NYSERDA or its Program Implementer.

Section 2.08 Warranty

The Partner shall provide the Homeowner a written warranty of labor and materials valid for a minimum of one (1) year from the date the service is performed. Equipment installed shall carry the manufacturer's warranty, plus optional extended warranty coverage, if applicable.

Section 2.09 Customer Issue and Dispute Resolution

If a Partner, or its subcontractor, becomes involved in a dispute with a Homeowner or customer over business practices, the Partner shall work to settle the dispute amicably utilizing the Partner's Customer Issue and Dispute Resolution processes on file with BPI.

NYSERDA and its Program Implementer have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Partner shall hold NYSERDA and its Program Implementer harmless from any legal action arising from work associated with the Program.

Section 2.10 Financing Requirements

(a) New York State Banking Department

The Partner shall not offer customers "vendor financing" unless such financing is regulated by the New York State Banking Department or the appropriate federal regulatory agencies.

(b) Program Financing

The ability to provide access to consumer financing options and incentives through the Program is reserved exclusively for the Partner. At no time may a non-participating subcontractor of a Partner represent itself as having the ability to access Program financing.

The Partner shall ensure that the Program financing options are utilized only for the installation of those Eligible Measures and Accessories identified in the work scope submitted to and satisfactorily reviewed by the Program.

Article III. Consumer Relations

Section 3.01 Consumer Inquiries

Partners shall promptly and appropriately respond to inquiries referred to the Partners by NYSERDA.

Section 3.02 Consumer Referrals

Partners shall accept referrals from the Program and shall make every reasonable effort to encourage the Homeowner to participate in the Program and, when providing Program services to these referral leads, do so in accordance with the Program guidelines, this Agreement, and the contents of the Contractor Resource Manual.

Section 3.03 Timely Communication

Partners shall ensure prompt and accurate reporting of project completions to the Homeowner and the Program.

Article IV. Business Practices

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

Section 4.01 Contract Compliance

It is the sole responsibility of the Partner to ensure that all contracts and subcontracts submitted to the Program by the Partner are written in full compliance with the Laws of New York, General Business, Article 36-A "HOME IMPROVEMENT CONTRACTS".

Section 4.02 Professional Conduct

The Partner shall treat all customers fairly and deliver promised services in a timely, competent, professional, and reasonable manner.

Section 4.03 Professional Courtesy

Partners shall conduct themselves in a professional, respectful, and reasonable manner when interacting with any NYSERDA, Program Implementation, or Program Quality Assurance staff. Partners shall not engage in behavior that adversely impacts NYSERDA, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

Section 4.04 Program Representations

The Partner shall not engage in unfair, or inaccurate, representations of NYSERDA, the Program, the Program Implementer, or Program affiliates.

(a) Partner

The Partner shall properly and accurately represent the relationship of the Partner and its subcontractor(s) to the State of New York, NYSERDA, and NYSERDA's Program Implementer. This relationship shall be that the Partner is an independent contractor, accredited by BPI and voluntarily participating in NYSERDA's Program.

The Partner shall not represent itself as working for, approved by, or certified by, the State of New York, NYSERDA or NYSERDA's Program Implementer. The Partner shall not represent that the services they provide, or the materials they use, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Program Implementer.

(b) Non-Participating Subcontractor

A non-participating subcontractor of a Partner shall not represent itself as a participant in the Program or as able to offer Program services and benefits, for the purpose of executing the sale of a non-Program project. Additionally, any subcontractor of a Partner shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementer.

Section 4.05 Proper Use of Program Marketing Material

(a) Distribution to Non-Participating Contractor

The use and distribution of Program marketing materials is intended for the exclusive use by Partners. Any Partner found to be providing Program marketing materials to a non-participant, for the intent of distribution to Homeowners by the non-participant to execute the sale of a project will be subject to disciplinary measures.

(b) Required Program Material

To ensure the Homeowner is educated on the features and benefits of the Program and able to make an informed decision, the Partner shall distribute required customer and Program information materials to the Homeowner prior to contracting for Program related measures or the installation of measures proposed in the Program work scope. Required Program materials are provided in the Contractor Resource Manual.

(c) Website Content

The Partner shall avoid posting specific Program information and documentation on their individual company Web sites. Partners are encouraged to link their Web sites directly to NYSERDA's Web site and reference the same information and documentation as NYSERDA's Web site, which will help ensure consistent distribution of Program information and documents to all interested parties. Partners shall inform their Webmaster of any Programmatic changes that may affect the content on the Web site.

The use of NYSERDA's logo on any Partner's Web site is strictly prohibited. A Partner can market their company as a participant in NYSERDA's Home Performance with ENERGY STAR Program and may link to NYSERDA's Web site for relevant Program information. The Home Performance with ENERGY STAR Logo is available for download from the Partner Portal on www.getenergysmart.org. For details on NYSERDA's logo policy, please review the Program's Co-Operative Advertising Guidelines.

Section 4.06 Computer, Operating System, and Internet Access Requirements

(a) Minimum Requirements

The Partner shall have access to a computer with an operating system capable of running the required and necessary Program software. The Partner shall have an active e-mail account and be able to receive e-mails from NYSERDA and Program affiliates.

(b) Modeling Software

The Partner shall acquire and use the Program-approved energy modeling software for building analysis, energy savings estimation, and reporting.

(c) Use of Program Software

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

(d) Training

The Partner shall actively pursue training and become proficient in the use of Program approved modeling software.

Article V. Home Performance with ENERGY STAR Program Projects

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

Section 5.01 Required BPI Certification

(a) Comprehensive Home Assessment

The Partner shall ensure that personnel conducting a Comprehensive Home Assessment (CHA) are BPI certified at the Building Analyst level.

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

The Partner may only submit projects in the Program for which it has the appropriate BPI Professional certifications. (i.e., a Partner that holds only Envelope Professional certification cannot submit heating or cooling system work, which requires Heating or Cooling certification, through the Program)

Section 5.02 Project Oversight

The Partner may only submit completion documentation for projects that have had direct oversight by personnel with the appropriate BPI Professional Certification.

The Partner shall ensure that personnel with the appropriate BPI certification(s) supervise all Program related projects including work performed by a subcontractor. The Participating

Contractor shall ensure a BPI certified technician with the appropriate BPI Professional Certification for the measures installed performs the required project test-out.

Section 5.03 Use of Subcontractors

A Partner employing the services of subcontractors shall ensure each subcontractor adheres to Program policies and standards.

(a) Documentation

Any subcontractor(s) utilized by a Partner shall be listed on the Homeowner's contract and all subcontract documents submitted to the Program.

(b) Participating Contractor as Subcontractor

The Partner is strongly encouraged to employ the services of other Partners when subcontractor work is required.

(c) Business Structure/Subcontractor Relationship

The Partner shall, upon written request from the Program, provide information on all subcontractors who have provided services on Program projects. The information provided shall fully describe the nature of these relationships, and any other relevant information requested by NYSERDA.

(d) Representation

A non-participating subcontractor of a Partner shall not represent itself as a participant in the Program or as able to offer Program services and benefits, for the purpose of executing the sale of a non-Program project. Additionally, any subcontractor of a Partner shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementer.

(e) Past Performance

The Partner shall not employ or subcontract with any firm or individual that is under suspension or has been terminated from this Program, or any other NYSERDA program, without NYSERDA's prior written permission.

Section 5.04 Comprehensive Home Assessment Process and Report

The Program offers most consumers free or reduced cost comprehensive home assessments. The Partner shall follow the free/reduced-cost comprehensive home assessment reservation and incentive claim process outlined in the Contractor Resource Manual.

The Partner shall provide the Homeowner with an assessment report in a timely manner. The report shall be generated from Program-Qualified software and include a detailed work scope proposal that identifies measures and pricing for improving the energy efficiency, comfort and safety of the home. The report shall include all energy efficiency, comfort, health and safety opportunities that exist in the home regardless of type of services the Partner offers (i.e., a Partner with heating certification needs to identify applicable envelope issues in the report) while adhering to the policies and procedures. The report shall also list available incentives and offer an analysis of financing for 5, 10, or 15 years at the available program interest rate.

Section 5.05 Minimum Production Requirement

The Partner is required to report a minimum of twelve (12) completed projects within their first year of production, or at least \$50,000 in completed, eligible work. In each succeeding year of participation, the Partner is required to report to the Program a minimum of twenty-four (24) completed projects, or at least \$100,000 in completed, eligible work, per year.

Partners that fail to meet the production requirement will be placed on probation for a period of 90 days. During that time, the Partner will not be eligible to receive reimbursement for BPI Accreditations and will be required to meet the annual production requirement, or report a minimum of six (6) completed projects to the Program. If a Partner fails to meet the project completion requirement during the probationary period, their participation in the HPwES Program

will be subject to termination. Refer to Section 8.02 for additional information about probation and termination designations.

Additional details on the minimum production requirement are found in the Contractor Resource Manual.

Section 5.06 Project Submittal Review, and Completion

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

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

(a) Project Submittal

The Partner shall only submit projects that comply with the policies set forth in this Agreement, the Contractor Resource Manual, or Program Announcement. Project submittal documentation shall include: building models developed using the Program approved modeling software, the completed Customer Information Form, test-in data, and any other information identified in the Contractor Resource Manual. The Program will reject non-compliant Project submittals.

Program incentives will be denied on any submitted Project that is found:

- to be partially or fully completed at the time of submittal or prior to approval. In the event the project does not adhere to this requirement, it shall not be accepted by the Program without prior written permission from NYSERDA, or
- without a signed Customer Information Form prior to work beginning, or
- with a Certificate of Completion Form that has been signed prior to approval or work completion.

In these cases, the Partner shall also assume all financial liabilities associated with these projects (i.e., Contractor incentives and consumer financing incentives including the value of the Assisted Home Performance subsidy).

(b) Initial Project Review

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

Any project in the initial review stage that has been partially or fully completed prior to the initial Project review process being completed, shall not be accepted by the Program, and will be ineligible for any Program incentives. In these cases, the Partner shall assume all financial liabilities associated with these projects (i.e., Contractor incentives and consumer financing incentives including the value of the AHP subsidy). Exceptions to this requirement are emergency no-heat or failed domestic hot water tank situations.

(c) Project Completion

Upon completion of Program project, the Partner shall upload all data identified in the Contractor Resource Manual including, but not limited to: test-out information, building model software files, and a signed Certificate of Completion.

For each project completed through the Program, the Partner shall submit all required documentation needed to process Program incentives. All completion documents must be submitted to the Program within ninety (90) days of the work scope approval. Projects not completed within the 90 day approval timeframe will need to reapply for approval.

All completion documents must be submitted to the Program within thirty (30) days of the Homeowner signing the Certificate of Completion. Project completion documentation received after the 30-day deadline will be denied incentives, and the Partner will assume all financial liabilities for the project, including the value of the Homeowner incentive and Assisted Home Performance Subsidy, where applicable. For the complete list of project submittal and completion documents, refer to the Contractor Resource Manual.

(d) Satisfactory Job Review and Financing Approval

Notification of Satisfactory Job Review and Program Financing approval are mutually exclusive. Approval of Program financing or Assisted Subsidy does not imply a Satisfactory Job Review of a submitted project. Similarly, a satisfactory job review does not imply approval of Program financing or Assisted Subsidy.

Section 5.07 Project Minimum Requirements and Eligible Measures

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

Section 5.08 Savings to Investment Ratio – Total Resource Cost

All work submitted to the Program shall be subject to the Savings to Investment Ratio (SIR) and Total Resource Cost (TRC) requirements detailed in the Contractor Resource Manual.

Section 5.09 Project Payment Processing

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

Section 5.10 Program Financing Options

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

Section 5.11 Repayment or Recapture of Program Incentives

The Partner acknowledges that failure to follow Program requirements and procedures contained in this Agreement, Contractor Resource Manual, and Program Announcements, will result in a loss of applicable incentives and possible disciplinary action.

The Partner also acknowledges that if NYSERDA determines that the Partner has not strictly adhered to the terms and conditions of the Program for a project or projects, any Program subsidies and/or incentives paid to the Homeowner and/or Partner on the project, or projects, shall be repaid to, or recaptured by, the Program from the Partner. The Partner shall provide NYSERDA direct payment based on the full value of any Program incentives paid on Projects that do not comply with Program terms, conditions, policies or procedures identified in this Agreement, the Contractor Resource Manual, or Program Announcements.

Article VI. Assisted Home Performance with ENERGY STAR Projects

For income eligible households, NYSERDA offers an Assisted Home Performance with ENERGY STAR Subsidy (“Assisted Subsidy”) that significantly reduces the project cost to the Homeowner.

The Partner acknowledges that failure to follow Program requirements and procedures contained in this Agreement, the Contractor Resource Manual, and Program Announcements, will result in a loss of all applicable incentives and possible disciplinary action.

Access to the Assisted Subsidy is a privilege that is offered to a Partner who has a participation status of ‘Provisional’, ‘Full’, or ‘Probation’ (See Section VIII for details on Partner participation statuses). Partners who submit one or more Assisted Home Performance projects agree to the additional conditions detailed in Article VI of the Agreement.

Section 6.01 Savings to Investment Ratio – Total Resource Cost

All projects submitted to the Program shall be subject to the applicable Savings to Investment Ratio (SIR) and/or Total Resource Cost (TRC) requirements for Assisted Home Performance Projects as detailed in the Contractor Resource Manual.

Section 6.02 Pricing

All requirements of the Home Performance with ENERGY STAR Program apply to Assisted Home Performance Projects. The Partners shall apply fair and reasonable pricing in providing Program services for the installation of Eligible Measures included in Assisted Home Performance Projects submitted to the Program.

Section 6.03 Program Financing Options

The Partner shall ensure that the Program financing options are utilized only for the installation of Eligible Measures and Accessories identified on the compliant work scope. A list of Program Eligible Measures and information on the various Program financing options is provided in the Program Contractor Resource Manual.

(a) Income Eligibility Verification

To qualify for an Assisted Subsidy, a Homeowner's or Renter's income must be verified by NYSERDA.

Section 6.04 Mechanics Lien

The Partner shall agree to limit any Mechanics Lien on any Assisted Project to the value of such project minus the value of the Assisted Subsidy.

Article VII. Quality Assurance

The goal of the Quality Assurance (QA) process is to verify that projects in the Program have met all Program requirements while ensuring healthy and safe living conditions for the occupants. Overall, each Program project shall undergo a basic review process that includes a work scope review and a review for Eligible Measures under the Program. The QA review of Program projects may incorporate a Field review, which includes an administrative component. Field QA and Administrative reviews are a crucial part of the Program and provide NYSERDA and Partners with valuable information related to compliance with technical requirements and Program rules.

The Partner shall not inhibit or discourage Homeowners from participating in the Program QA process and shall make a good faith effort to facilitate the Program QA process.

The Partner shall provide project related information to NYSERDA, the Program Implementer, or its QA contractor upon request. This information may include, but is not limited to the approved modeling software files, contracts, and installed product information.

Article VIII. Partner Status Designations

Section 8.01 Participation

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

(a) Provisional

The Partner shall have the participation status of 'Provisional' during, at a minimum, the first six (6) months of participation.

(i) Program Benefits

The Partner will be eligible for contractor incentives, including Marketing and Cooperative Advertising Incentives, and its customers will have access to consumer financing offered through the Program.

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

Projects completed by a Partner on provisional status are subject to standard Program QA/QC oversight.

Any time during, or at the end of a Partner's Provisional period, NYSERDA shall review the Partner's performance and make a determination of the Partner's future participation status. NYSERDA could change the Partner's status to 'Full', extend their Provisional status, or place the Partner on Probation, Suspension, or Termination.

(b) Full

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

Section 8.02 Disciplinary Measures

A Partner who fails to comply with any of the terms of this Agreement, or who provides fraudulent or misleading Program documentation, is subject to the provisions of this Section.

NYSERDA reserves the right to impose any of the following disciplinary measures at any time. In all cases involving a Partner's disciplinary status or denial of Program incentives, NYSERDA's written decision is final.

(a) Probation

A probation period will last no less than 30 days and the Partner will be subject to a higher level of QA/QC oversight. Grounds for a Partner being placed on probation shall include, but are not limited to, those listed below.

The Partner on Probationary status will maintain its eligibility for contractor incentives, including Marketing and Cooperative Advertising Incentives and Homeowners will still have access to consumer financing options offered through the Program.

(i) Project Deficiencies

The Partner has five (5) or more Declarations of Completions, resulting from QA inspections performed during the term of this Agreement, that have been unresolved for more than 30 days.

(ii) Non-compliance with Program Policies and Procedures

The Partner has failed to adhere to Program policies and procedures as outlined in this Agreement, the current Program Technical Specifications, and Program Announcements.

(iii) Health and Safety Violations

The Partner has two or more Quality Assurance 'F3' scores within a six (6) month period.

(iv) BPI Accreditation Breach

BPI informs NYSERDA that the Partner is in breach of its BPI Accreditation Agreement.

(b) Suspension and Termination

A suspended or terminated Partner forfeits its eligibility for contractor incentives, including Marketing and Cooperative Advertising Incentives, and its customers will not have access to Program consumer incentives and financing options. NYSERDA has sole discretion in determining whether to suspend or terminate a Partner. Grounds for Partner suspension or termination shall include but are not limited to, the following:

(i) Unresponsive

The Partner is on Probationary status and has either been unresponsive to, or failed to adequately fulfill, the terms of their probation.

(ii) Non-compliant with Program Policy and Procedures

The Partner has failed to adhere to Program policies and procedures as outlined in this Agreement, the Contractor Resource Manual, and Program Announcements, thereby putting the Program, NYSERDA, and consumers at risk.

(iii) BPI Accreditation Suspension

BPI informs NYSERDA that the Partner's BPI Accreditation has been suspended or terminated.

(iv) Misrepresentation

The Partner has submitted false or fraudulent documentation to the Program at any time, during any phase of participation in the Program.

(v) Convictions

A Partner shall be immediately terminated from the Program if the Partner or any principal of the Partner is convicted of a criminal charge that casts the Program in negative light or calls the integrity or workmanship of the Partner into question.