

Multifamily Performance Program Partnership Agreement



NYSERDA's MULTIFAMILY PERFORMANCE PROGRAM ("Program") is a comprehensive Program that addresses the needs of the multifamily sector by working with developers, building owners and their representatives ("Participants") to improve the energy efficiency, health, safety, and security of residential buildings with five (5) or more residential units.

The Program consists of the *New Construction* and the *Existing Buildings Components*, serving all combinations of market-rate and low- to moderate-income projects through a common process and a varying schedule of incentives. This Program relies on a network of contractors who have demonstrated their ability to provide building performance services to multifamily buildings. These contractors are identified as Multifamily Performance Partners (herein referred to as "Partners"), and afforded the privileges and incentives outlined in this Partnership Agreement ("Agreement") and its Attachments. The Program will work to achieve the following NYSERDA goals:

1. Create a market-based network of building performance specialists that are capable of delivering services to developers, building owners and their representatives;
2. Facilitate access to capital to fund comprehensive energy and energy-related improvements;
3. Reduce the burden imposed by energy consumption and other utility-related costs, with a significant emphasis on providing this benefit to low- to moderate-income residents while maintaining or improving the health, safety, and security of the multifamily buildings;
4. Package energy efficiency with other types of improvements such as advanced meters coupled with a real-time pricing or time-of-use electricity rate structure, distributed generation and renewable energy;
5. Reduce the multifamily sector's contribution to the system peak demand;
6. Promote the ENERGY STAR[®] label.

The *New Construction Component* serves multifamily buildings of five (5) or more residential units. This Component will address the needs of new construction and gut rehabilitation projects by providing assistance to improve the energy efficiency, health, safety, and security of these projects as they are planned, designed, and constructed. This Component uses a set of protocols that leads a multifamily project to achieve a predetermined energy performance target. An Energy Reduction Plan must be developed to achieve the energy performance target. Developing that Energy Reduction Plan, completing the measures identified in that Plan, and confirming that the performance target has been achieved will entitle the Participant to receive NYSERDA incentives and may entitle the building to receive an ENERGY STAR[®] label provided by the U.S. Environmental Protection Agency.

The *Existing Buildings Component* serves existing multifamily buildings of five (5) or more residential units by providing assistance to improve their energy efficiency, health, safety, and security. This Component requires that the Participant benchmark its existing facility's current energy performance against a set of similar buildings using the Program's Benchmarking Tool. The Benchmarking Tool will be used to define the energy performance target the Participant will be expected to achieve. An Energy Reduction Plan must be developed to achieve the energy performance target. Developing that Energy Reduction Plan, completing the improvements identified in that Plan, and confirming that the performance target has been achieved will entitle the Participant to receive NYSERDA incentives and may entitle the building to receive the **New York Energy \$martSM** Building designation.

By executing this Agreement, the Partner agrees to play an active role in the Program by providing high-quality building performance services to Participants in the Program in compliance with Program's terms and conditions. This Agreement identifies the terms and conditions required of the Partner when providing services under the Program. The Agreement can be terminated at any time, for any reason, by either NYSERDA or the Partner. The specific types of services required of a Partner, along with the corresponding terms, conditions, and incentives, are detailed in the Attachments to this Agreement.

All Partners hereby agree to the following conditions:

- 1. The Partner shall properly respond to leads referred by the Program.** If the Partner chooses to accept referrals from the Program, the Partner shall provide services expediently to these referrals, in accordance with the Program guidelines and this Agreement.
- 2. The Partner shall be active in the Program. Attachment H of this Agreement, titled "Partner Status Designations", describe specific Partner rights, responsibilities and limitations.**
 - a) The Partner shall execute a signed contract with each Participant that, at a minimum, includes the responsibilities and tasks detailed in this Agreement and its Attachments.
 - b) The Partner shall strive to ensure that all Participants served by the Partner under the Program make a bona fide attempt to achieve the Program's performance target.
 - c) The Partner must meet the "Full" Partner requirements listed in Attachment H of this Agreement in order to maintain the 'Full' Partner status. New Partners shall be expected to comply with this requirement within a one (1) year period beginning from the execution date of this Agreement and will remain designated as "Provisional" Partners, as outlined in Attachment H of this agreement, until they have complied. Existing Partners must have complied with this requirement within the previous one-year contract term. Failure to comply with this requirement will cause the Partner to be assigned the "Provisional" Partner status.
- 3. The Partner shall abide by the following business practices:**
 - a) The Partner shall treat Participants fairly and deliver promised services in a timely and responsible manner.
 - b) The Partner shall properly represent the relationship of the Partner to the State of New York, NYSERDA, NYSERDA's Program Implementer, and NYSERDA's Quality Assurance Contractor. The Partner is an independent contractor, qualified to provide services to Participants within NYSERDA's Program. The Partner shall **not** represent itself as working for, approved by, endorsed, or certified by the State of New York, NYSERDA, NYSERDA's Program Implementer, or NYSERDA's Quality Assurance Contractor.
 - c) The Partner shall maintain any relevant licenses required by federal, state, county, or municipal governments or any other agencies with jurisdiction over work performed with Program support.
 - d) The Partner shall maintain, at its own cost, general liability insurance coverage of at least \$1 million and produce evidence of such upon request by NYSERDA or its Program Implementer.

- e) It is the sole responsibility of the Partner to ensure that all contracts and subcontracts submitted to the Program by the Partner comply with the Laws of the State of New York.
 - f) The Partner shall provide all Participants, or potential Participants, with the Program information and materials made available through NYSERDA and/or NYSERDA's Program Implementer.
 - g) If the Partner becomes involved in a dispute with a Participant, the Partner shall work with the Program Implementer and NYSERDA to resolve the dispute amicably. In any event, the Partner shall hold NYSERDA, the Program Implementer, and the Quality Assurance Contractor harmless from any suit arising from services provided with Program support.
 - h) The Partner shall allow inspections of the work it performs under the Program by NYSERDA, or its designated contractors or agents. Upon request from NYSERDA or its Program Implementer, and at no additional cost to the Participant, the Partner shall make reasonable corrections to work that the Partner has performed to bring such work up to Program standards.
- 4. The Partner recognizes and acknowledges that this Partnership, and the opportunity to serve as a Partner to this Program, is a privilege.**
- a) Partners shall conduct themselves in a professional and respectful manner at all times, including when interacting with any NYSERDA, Program Implementer, or Program Quality Assurance staff.
 - b) NYSERDA may suspend or terminate this Agreement for any reason, including failure to maintain Program standards. Partners who submit fraudulent information or data to the Program risk immediate termination from the Program. In all cases involving a termination of this Agreement, or denial of Program incentives, NYSERDA's written decision is final.
 - c) NYSERDA reserves the right to limit the Partner's activity in the Program, including the number of projects undertaken by the Partner at any point in time or restricting activity to a particular component. Any such limitation will be based, in part, on the Partner's past performance, including quality of the Partner's Program submissions and its compliance with the relevant Program guidelines. Partners with no, or limited, historic Program activity will be subject to limitations on the number of projects accepted into the Program until an acceptable performance history has been established.
 - d) The Partner shall not employ a subcontractor that has been suspended or terminated from this Program or any other NYSERDA program to serve this Program, without NYSERDA's prior written permission. Likewise, the Partner shall not allow a direct employee to serve one of its Multifamily Performance projects if that employee served a principal function or in a significant capacity on a project which resulted in another firm's suspension or termination from this Program or any other NYSERDA program, without NYSERDA's prior written permission.
 - e) NYSERDA reserves the right to make changes to the Program upon notice to the Partner, through notifications by e-mail and posting on the Partner Portal section of www.Getenergysmart.org.
 - f) It is expressly understood that NYSERDA and its Program Implementer will not process or approve any incentive payment request submitted by a potential Participant until a fully executed contract between the Partner and Participant is received.
 - g) The Partner acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will result in a loss of applicable incentives, may result in an increased level of Quality Control and Quality Assurance of the Partner's work, and may lead to actions outlined in Attachment H of this Agreement, including termination of this Agreement.

5. **The Partner shall complete the NYSERDA Program orientation on the Program's requirements and protocols for each Program component the Partner intends to serve.** The Partner must fulfill this requirement prior to providing service to a Participant. Separate orientation sessions will be offered for the Existing Buildings and the New Construction components.
6. **The Partner shall notify NYSERDA whether it, its employee, or agent has participated, or is participating as a Partner or contractor in any NYSERDA program.** The Partner must divulge whether any individual(s) including owners, principles, shareholders, associates, employees, and subcontractors affiliated with the Partner have previously or are currently providing services in support of any NYSERDA programs. If so, the Partner should list any and all such individuals in Attachment B to this document. This is an ongoing requirement. As such, the Partner shall immediately notify NYSERDA of any changes or updates to this information by revising, signing, and re-submitting the Attachment B to this Agreement
7. **The Partner hereby consents to publication by NYSERDA of any data or metrics relating to the Partner's participation in the Program in any form or medium at the sole discretion of NYSERDA.**
8. **Becoming a Partner and maintaining an active status in the Program affords the Partner access to NYSERDA's support and incentive opportunities identified in the appropriate Attachment(s) to this Agreement.** The obligations of the Partner shall survive any expiration or termination of this Agreement. NYSERDA reserves the right to make changes to the Program, including any or all of the Attachments to this Agreement, at any time upon 30 days notice to the Partner. Such notification shall be provided by email and posting on the Partner Portal section of www.Getenergysmart.org.

MULTIFAMILY PERFORMANCE PROGRAM Partnership Agreement Signature Form

I understand and agree to comply with all commitments described in the MULTIFAMILY PERFORMANCE PROGRAM Partnership Agreement, including all applicable Attachments and supporting policies described or referenced therein. I certify that the qualifications, certifications, and accreditations identified by the Partner in this Agreement, the Attachments, and the Partner's submissions related to Attachment A are, and remain valid, and I agree to abide by the terms and conditions listed in each Attachment. The provisions of this Agreement are effective from the date of execution through June 30, 2012. NYSERDA reserves the right to modify the provisions of this Agreement at any time during the term of this Agreement. I certify, under the penalties of law, that the statements made in this Agreement have been examined by me, and are true and complete. I understand that by signing this Agreement, I consent to any other inquiry to verify or confirm the information I have given. The Partner shall submit a new, signed Signature Form on an annual basis to extend the effective date by one (1) year. The obligations of the Partner shall survive any expiration or termination of this Agreement. Execution of this Signature Form by NYSERDA will continue the Partnership Agreement under the terms and conditions outlined in this revised Agreement and its attachments.

Please complete the information below (Note if contact name for web site listing should be different):

Name and Title of Authorized Company Representative: _____

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

E-mail: _____ Web Site: _____

Tax ID #: _____

This agreement is not binding until signed by both parties.

Partner's Signature

Authorized Signature: _____ Date: _____

Title: _____

NYSERDA Signature

Authorized Signature: _____ Date: _____

Please mail two signed copies of this completed Partnership Agreement with all Attachments to:

Partner Liaison
TRC Energy Services
10 Maxwell Drive, Suite 200
Clifton Park, NY 12065

MULTIFAMILY PERFORMANCE PROGRAM

Attachment A – Submission Requirements

As a condition of participating in the Program, Partners must submit the documentation described in this Attachment for review and acceptance by NYSERDA. NYSERDA will evaluate the application prior to executing a Partnership 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 successfully operate a business within New York State, and if applicable, the past performance on the applicant in the Program (e.g., the quality of workmanship observed through the Program's Quality Assurance/Quality Contract (QA/QC) processes, willingness to resolve deficiencies discovered during reviews and/or 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 multifamily housing, as defined by the Program.

1. The Partner shall demonstrate that it possesses a thorough knowledge of energy efficiency and the comprehensive opportunities available to multifamily projects, including potential energy efficiency measures and improvements, their performance criteria, cost, and availability.
 - A. The Partner must provide NYSERDA with the following:
 - i. Evidence that at least one (1) individual named in the Partner's submission has acted in a lead capacity on at least three multifamily projects for which comprehensive energy efficiency scopes of work were developed and fully implemented. For Existing Buildings, lead capacity is defined as having performed a comprehensive energy audit of a multifamily facility, selected a comprehensive package of energy reduction measures, calculated the projected cost and energy reduction of each measure using an energy modeling or other interactive energy savings calculation tool, written a report describing the suggested scope of work, and provided construction period oversight of the implementation of the energy-efficient scope of work. For New Construction, lead capacity is defined as having built a baseline and proposed energy model based on a multifamily building design, selected a comprehensive package of energy reduction measures, calculated the incremental cost and energy reduction of each measure using an energy modeling tool, written a report describing the suggested scope of work, and provided construction period oversight of the implementation of the energy-efficient scope of work. Evidence that the Partner meets this lead capacity criteria must include, at minimum:
 1. Three (3) synopses of previous projects that satisfy the criteria listed above, including a succinct description of the project which summarizes the completed energy efficiency work scope, how it was funded, and a description of the proposer's direct involvement in the project from inception to completion. Synopses should also describe which energy modeling tools were used; and,
 2. Full references for each project from the owner, developer, A&E firms identified as providing technical support, and from trade contractors, as appropriate, to support the proposer's role and performance for each specific project; and,

3. An audit report for one (1) of these previous projects that includes the level of detail required by MPP requirements for an Energy Reduction Plan. The sample should demonstrate a whole-building survey of existing conditions (for Existing Buildings) or proposed design (for New Construction), a comprehensive analysis of possible energy reduction measures including their associated costs, and a review of the calculations and assumptions used to determine energy savings that informs the measure analysis. For Existing Buildings this should include an analysis of past energy consumption.
 - ii. A description of the Partner's experience with energy modeling tools (TREAT, eQuest, etc.). Description should include the tools used, a narrative description of how the tools have been used and for how long.
 - iii. Resumes of all staff and named subcontractor(s)¹ which the Partner anticipates will serve multifamily projects entered into the Program.
 - iv. The Partner shall provide an outline of its plan for serving multifamily projects under this Program, from initial application through construction. In addition to submission of resumes as requested above, this plan shall identify the primary individuals who would serve these projects and their expected roles, whether those individuals are employees or subcontractors. The Partner shall also describe the management structure, the existing internal quality control processes, including who will be responsible for ensuring the quality of submissions, and other information relevant to the delivery of quality services to Participants.
2. The Partner shall demonstrate the capability to conduct business successfully by providing NYSERDA with **one** of the following:
 - A. A satisfactory Dunn and Bradstreet Rating; OR
 - B. Membership in the Better Business Bureau; OR
 - C. Specific evidence of business capacity including all of the following:
 - i. a satisfactory banking reference; and,
 - ii. confirmation that the firm has been in business for a minimum of three (3) years except, in cases approved by NYSERDA, otherwise experienced individual(s) start a new company; and,
 - iii. confirmation that the principals in the business have a satisfactory individual credit score.

¹ A letter of interest/support executed by the subcontractor must be submitted for all subcontractors identified in the Partner's submission. If a subcontractor is also a Partner to this Program in its own right, it should be indicated in this submission.

MULTIFAMILY PERFORMANCE PROGRAM

Attachment B – Partner Disclosure of Prior Service to NYSERDA Programs

Please provide disclosure of the provision of services as a Partner or contractor in support of NYSERDA programs. Check the appropriate box and provide the required information. Partner shall immediately notify NYSERDA of any changes or updates to this information by revising, signing, and re-submitting Attachment B.

- No individual(s) including owners, principles, shareholders, associates, employees and named subcontractors affiliated with _____ have previously or are currently providing services in support of any of NYSERDA's programs including the MULTIFAMILY PERFORMANCE PROGRAM.

- Below are listed the individual(s) including owners, principles, shareholders, associates, employees, and named subcontractors affiliated with _____ who have previously or are currently providing services in support of any of NYSERDA's programs, including the MULTIFAMILY PERFORMANCE PROGRAM.

Name of Employees & Subcontractors²

Name of Program served

Partner's Signature – *Please include two copies of this document with original signatures in submittal.*

Authorized Signature: _____ Date: _____

Title: _____

² A letter of interest/support executed by the subcontractor must be submitted for all subcontractors identified in this Attachment, as required under Attachment A. If a subcontractor is also a Partner to this Program in its own right, this should be indicated.

MULTIFAMILY PERFORMANCE PROGRAM

Attachment C – Geographic Coverage

Please indicate, by selecting the appropriate box(es), which counties within New York State your organization plans to offer services. You may choose to offer services:

Statewide

or in one or more counties as indicated below.

Capital District/Saratoga Region

- Albany
- Fulton
- Montgomery
- Rensselaer
- Saratoga
- Schenectady
- Schoharie
- Warren
- Washington

Mid Hudson Region

- Columbia
- Delaware
- Dutchess
- Greene
- Orange
- Putnam
- Rockland
- Sullivan
- Ulster
- Westchester

North Country Region

- Clinton
- Essex
- Franklin
- Hamilton
- Herkimer
- Jefferson
- Lewis
- St. Lawrence

Central New York Region

- Cayuga
- Cortland
- Madison
- Oneida
- Onondaga
- Oswego

New York City Region

- Bronx
- Kings
- New York
- Queens
- Richmond

Southern Tier Region

- Broome
- Chemung
- Chenango
- Otsego
- Schuyler
- Steuben
- Tioga
- Tompkins

Finger Lakes Region

- Genesee
- Livingston
- Monroe
- Ontario
- Orleans
- Seneca
- Wayne
- Wyoming
- Yates

Western New York Region

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Niagara

Partner’s Signature – *Please include two copies of this document with original signatures in submittal.*

Authorized Signature: _____ Date: _____

Title: _____

MULTIFAMILY PERFORMANCE PROGRAM

Attachment D – Certifications, Accreditations, and Licenses

Partner shall check the appropriate boxes below to indicate the certifications, accreditations and/or licenses held by Partner’s staff and subcontractors. Please note that the purpose of this Attachment is to identify specific skills held by Partners in the MULTIFAMILY PERFORMANCE PROGRAM network. The listed certifications, accreditations and/or licenses are not required for becoming a Partner. NYSERDA reserves the right to request documentation necessary to verify any and all information provided to NYSERDA by the Partner.

The Partner, at its option, may additionally submit a brief written description of the firm to identify the nature of the firm, its general skills, its unique skills, and otherwise describe the Partner firm’s capabilities. This information may be posted on NYSERDA’s website to aid a potential Participant’s selection of a Partner to serve their project.

- Multifamily Hydronic Heating System Design Professional** as certified by the Building Performance Institute (BPI)
- Multifamily Advanced Heating Plant Technician** as certified by the Building Performance Institute (BPI)
- Multifamily Building Analyst Professional** as certified by the Building Performance Institute (BPI)
- Certified Energy Manager (CEM)** as certified by the Association of Energy Engineers
- Distributed Generation Certified Professional (DGCP)** as certified by the Association of Energy Engineers
- LEED® Accredited Professional (AP)** through U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED®) Program
- Photovoltaic (PV) Installer** as identified through NYSERDA’s list of Eligible PV Installers
- Eligible Wind Power Installer** as identified through NYSERDA’s list of Eligible Wind Installers.
- Advanced Metering Professional** as identified through participation in NYSERDA’s Comprehensive Energy Management Program
- Commercial Mortgage Broker Licensee**
- New York State Licensed Professional Engineer**
- New York State Licensed Professional Architect**
- Certified Property Manager (CPM)** as certified through the Institute of Real Estate Management (IREM)

Partner’s Signature – *Please include two copies of this document with original signatures in submittal.*

Authorized Signature: _____ Date: _____

Title: _____

MULTIFAMILY PERFORMANCE PROGRAM

Attachment E – Partner Incentives

Becoming a Partner and maintaining an active status in the MULTIFAMILY PERFORMANCE PROGRAM affords the Partner access to specific NYSERDA support and incentive opportunities, while available. This funding is limited and will be dispensed on a first come, first served basis. Prior to incurring any costs for these activities, Partners are encouraged to seek pre-approval from NYSERDA. While not necessary, this will help to ensure that funding is eligible for these expenses. Training, certification, and equipment incentives are available through NYSERDA workforce Program Opportunity Notices (PON). The current version is PON 1816. Software and co-op advertising incentives are available through MPP. Software and co-op advertising incentives are available through MPP. Reimbursement Request forms and procedures are posted on the Partner Portal section of www.getenergysmart.org

Background

Since the inception of the Multifamily Performance Program, NYSERDA has supported individuals and participating contractors and partners with reimbursement for costs associated with training tuition, Building Performance Institute (BPI) certifications, and Company BPI accreditation. This support continues through the NYSERDA programs and is supplemented with incentives as outlined below. Items 1-6 summarize current PON 1816 incentives. For more information on these incentives please go to www.nyserda.org. Please note that incentives are subject to change.

1. CEEBS Training Incentives

Building science training to prepare students for BPI certification is offered through the Center for Energy Efficiency and Building Science (CEEBS), headquartered at Hudson Valley Community College. CEEBS is funded in large part by NYSERDA and uses curriculum licensed by NYSERDA to deliver building science training across the State. CEEBS will continue to automatically process reimbursement to eligible students for building science training courses offered at the CEEBS locations.

Training participants completing the Multifamily Building Analyst and Multifamily Building Operator training and not yet signed on as participating Multifamily Performance Program partners are eligible to receive 50% reimbursement for training fees, and 75% reimbursement of written and field exam fees by completing the *BPI Certification and Contractor Accreditation Reimbursement Form* and submitting to NYSERDA along with other required documentation.

Participating partners in NYSERDA's Multifamily Performance Program are eligible for an additional 25% reimbursement for fees associated with training. For more information regarding available CEEBS training, visit: <http://www.getenergysmart.com/GreenJobs/Efficiency.aspx>.

2. BPI Certification Incentives (within CEEBS network)

After achieving BPI certification, eligible participants can apply for NYSERDA incentives to offset the cost of required written and field exams. To be eligible for NYSERDA funding, it is required that the training be completed and the certification be awarded between November 30, 2009 and May 31, 2012. Eligible participants who receive a new BPI certification may receive 75% reimbursement of written and field exam fees by submitting the *BPI Certification and Contractor Accreditation Reimbursement Form* along with other required documentation. Participating partners in NYSERDA's Multifamily Performance Program are eligible for an additional 25%

reimbursement for fees associated with written and field exams. Eligible participants who receive a recertification (certification renewal) may receive 75% reimbursement for only those fees associated with the field exam.

3. BPI Certification and Training Incentives (outside the CEEBS network)

Building science training to prepare students for BPI certification is also offered through private training entities. Eligible participants attending building science training in locations other than the CEEBS learning centers may apply for 50% reimbursement of costs associated with certification upon successful award of an eligible certification. Eligible participants must submit to NYSERDA a completed *BPI Certification and Contractor Accreditation Reimbursement Form* and required documentation including a receipt for tuition paid for the certification preparation course, fees associated with the written and field exams, and application fee. To be eligible for NYSERDA funding, the training must be completed and the certification must be awarded between November 30, 2009 and May 31, 2012.

4. Certification and Certification Preparation Training Incentives

After achieving an approved nationally recognized certification (other than BPI), participants may apply for 50% reimbursement of costs associated with certification and certification preparation training up to a maximum of \$200 in NYSERDA funding. Eligible participants must submit a completed *Certification and Prep Course Reimbursement Form* to NYSERDA along with required documentation including tuition paid for certification preparation course fees, exam, and application fees. To be eligible for NYSERDA funding, the training must be completed and the certification must be awarded between November 30, 2009 and May 31, 2012, and the Form must be submitted no later than May 31, 2012.

A list of approved certifications relevant to energy efficiency skills and competencies is provided on the reimbursement form. All training must be held within an SBC service territory as defined above. Certifications from the Association of Energy Engineers (AEE), United States Green Building Council (USGBC), International Facility Management Association (IFMA), American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Northwest Energy Efficiency Council Building Operator Certification (BOC), National Council on Qualifications for the Lighting Professions (NCQLP), North American Technician Excellence (NATE), and other relevant certifications for residential and commercial energy efficiency will be considered.

5. Contractor Accreditation

Incentives are available to reimburse certain costs associated with Company BPI Accreditation. To facilitate incentive processing, eligible contractors are encouraged to submit a completed *BPI Certification and Contractor Accreditation Reimbursement Form* to NYSERDA along with required documentation as outlined on this Form no later than May 31, 2012. It is anticipated that BPI will continue to provide a list of Contractor Accreditations directly to NYSERDA to verify eligibility for reimbursement of costs associated with new and renewal Company BPI Accreditation.

6. Contractor Equipment

Equipment incentives for up to 20% reimbursement of the purchase cost for qualified equipment, up to a maximum NYSERDA incentive of \$4,000 per applicant, are available under PON 1816 for participating contractors. Participating Multifamily Performance Program Partners throughout New York State (including LIPA, NYPA, SBC service territory, and municipalities outside the SBC service area) are eligible for incentives under PON 1816. Incentives are available for the purchase of

qualified equipment as approved by NYSERDA, and the equipment must be purchased between November 1, 2010 and May 31, 2012. To apply for incentives, the **Contractor Equipment Incentive Application Form** must be submitted to NYSERDA along with required documentation no later than May 31, 2012.

7. Co-operative Advertising

NYSERDA will reimburse 25% of costs for pre-approved advertising to promote the Partner's services related to this Program. Eligible advertisements must meet the terms and conditions listed in the Partner Portal section of www.getenergysmart.org.

8. Software

The following incentives are offered toward the purchase and support of NYSERDA-approved software, as listed in the Partner Portal section of www.getenergysmart.org:

- a) Reimbursement of 50% of the purchase price of one (1) software license. Reimbursement may be requested for a software license purchased within six (6) months prior to or following the execution of this Agreement that has not previously been reimbursed.
- b) Reimbursement of 50% of the annual cost of the software's support and upgrade subscription fees for up to two (2) years following execution of this Agreement provided that the Partner remains an active member of the MULTIFAMILY PERFORMANCE PROGRAM.

MULTIFAMILY PERFORMANCE PROGRAM

Attachment F – Terms and Conditions



EXISTING BUILDINGS COMPONENT

*(Applies only to Existing Multifamily Buildings
that include five (5) or more residential units)*

All documents referenced in the contract below are available on the Partner Portal located at www.getenergysmart.org or upon request by emailing MultifamilyPrograms@nyscrda.org.

The terms and conditions in this Attachment are effective upon the Partner's submission of the Program Application Packet for an existing building on behalf of a Participant. In addition to meeting the qualification requirements and satisfying all terms and conditions identified in the main body of this Agreement, the Partner also agrees to the terms and conditions in this Attachment for any project involving Existing Multifamily Buildings that the Partner serves under the Program.

The Partner acknowledges that failure to follow Program requirements and procedures including those contained in this Agreement, the Program Guidelines and associated supporting documents, and Program Announcements will result in the loss of applicable incentives to the Participant and may result in disciplinary action to the Partner.

The Participant may, at its option, contract separately for any of the required services but the Partner is responsible to NYSERDA to ensure all Program requirements, terms and conditions are satisfied. These services can be provided directly by the Partner's employee(s), or by other individual(s) or firm(s) having the required qualifications, certifications, licenses, and/or experience. Although NYSERDA does not require the Partner to submit documentation to confirm that the qualifications and/or experience required within this Attachment are met, NYSERDA reserves the right to request these documents from the Partner at any time.

In addition, the Partner agrees to the following:

1. **The Partner shall be responsive to the Participant.** Upon receipt of a submission from the Participant (e.g., owner or property manager), the Partner should prepare and submit a response within three (3) business days.
2. **The Partner shall facilitate participation in the Program on behalf of the Participant.** These facilitation efforts will, at minimum, include the following:
 - a) Lead an initial information session with the Participant. The Partner shall identify NYSERDA's goals, and present the various approaches and benefits of participating in the MULTIFAMILY PERFORMANCE PROGRAM, including the potential for the building to receive the **New York Energy \$martSM** Building designation. The Partner shall explain the purpose of the Program Benchmarking Tool and the Energy Reduction Plan, and discuss potential areas for energy savings available to the Participant.

- b) The Partner shall prepare and submit requests for incentive payments on behalf of the Participant, in accordance with the trigger events outlined in the Program Application Packet signed by the Participant, using the appropriate Request for Incentive form.
 - c) Confirm the Participant is eligible to receive incentives from NYSERDA through this Program.
- 3. The Partner shall, along with the Participant, participate in a Scoping Session with a NYSERDA representative.** The Scoping Session shall occur on-site to establish Participant interest, identify likely energy efficiency measures, and determine sources of potential funding.
- 4. Prepare and submit an initial Program Benchmarking Tool spreadsheet Utility Data Analysis Tool spreadsheet.** The following tasks shall be completed to achieve this goal:
- a) Acquire all of the current energy consumption data for all of the building(s).
 - b) Input that data into the Utility Data Analysis Tool and Program Benchmarking Tool.
 - c) Establish the Program Benchmarking Tool score, and the Energy Performance Target for the project.
- 5. The Partner shall conduct, or cause to be conducted, a comprehensive energy audit of the Participant's facility.** The Partner shall ensure this task is completed by a Multifamily Building Analyst Professional, as certified by the Building Performance Institute, Inc. (BPI). The audit shall be based on computer modeling in accordance with the Program's Simulation Guidelines. The Partner shall establish the auditor's experience in the energy auditing of existing buildings, and of building science and building performance diagnostics in multifamily housing. The Partner shall have or obtain at least three (3) models of multifamily buildings, previously developed by the auditor using an approved software tool, which are complete and sufficiently accurate to support an investment grade energy audit. The following tasks, at minimum, shall be completed:
- a) Confirm that the utility billing history and building consumption data provided by the Participant is both valid and sufficient to complete the energy audit(s).
 - b) Coordinate the date of the site inspection with the Participant to ensure the proper arrangements are made concerning maintenance staff availability and resident notification.
 - c) Conduct a comprehensive energy audit of all buildings included in the scope of the project, per the Program Guidelines and the BPI Technical Standards for Multifamily Building Analysts. (www.bpi.org)
 - d) Develop a package of energy reduction measures per the Program Guidelines and the BPI Technical Standards for Multifamily Building Analysts. This package must incorporate sufficient energy reduction measures to achieve the Energy Performance Target needed to satisfy Program requirements previously determined through use of the Program Benchmarking Tool.
 - e) Determine the costs of each of the recommended measures using R. S. Means or equivalent construction estimating procedure.
- 6. The Partner shall develop the Energy Reduction Plan, per the Program Guidelines, based on the results of the comprehensive energy audit.** The following tasks shall be completed to achieve this goal:
- a) Create an Energy Reduction Plan, which summarizes the auditor's recommendations, including the energy reduction measures and their projected costs, financial savings, and reductions in energy consumption, per the Program Guidelines and the BPI Technical Standards for Multifamily Building Analysts.

- b) Review the package of energy saving measures presented in the energy audit and confirm that this set of measures meets or exceeds the Energy Performance Target previously determined. The Partner shall provide this confirmation by comparing the Program Benchmarking Tool score for the existing building to the revised Program Benchmarking Tool score, calculated by including this package of energy saving measures, and by confirming that the assumptions used in calculating the energy savings for each measure, both for the baseline and the proposed conditions, are reasonable and in accordance with the Program's Simulation Guidelines.
- c) Engage in a series of consultations with the Participant and its representatives to further develop the scope of the energy saving recommendations. The consultations with the Participant shall be collaborative in nature by presenting alternatives and suggestions for providing safe, comfortable, affordable housing, and by working within the Participant's goals.
- d) The Partner shall directly provide or ensure provision of the necessary financial and/or regulatory assistance to develop the Energy Reduction Plan. At the Participant's option, the Partner shall assist the Participant in identifying the sources of funding necessary to fully implement the Energy Reduction Plan.
- e) Assist the Participant in developing a preliminary construction schedule that includes all energy efficiency measures included in the scope of the project. Schedule must allow for completing any necessary design work, obtaining required permits and regulatory approvals, and must ensure that all deadlines are met.
- f) Prepare a report based on the Energy Reduction Plan Template and submit it to NYSERDA or its representatives for review and approval.

7. The Partner shall ensure that recommended measures that make up the proposed project are reflected in the bid process and construction documents. The following tasks shall be completed to achieve this goal:

- a) Review the bid package(s), as appropriate, to ensure that sufficient detail is included to characterize the energy-related measures such that compliance with the Program's Minimum Performance Standards and appropriate construction/installation of the recommended measures can be assured.
- b) Partner shall ensure that, when appropriate, designers and installers of specific systems will hold applicable certifications and accreditations, such as BPI-certified Multifamily Heating System Design Professional.
- c) Ensure that the Minimum Performance Standards from the Program Guidelines are reflected in the bid package.
- d) Attend pre-bid meeting(s), as necessary, to explain program goals and procedures to bidding contractors. Explain energy-efficiency work scope in detail, including air sealing, insulation methods, controls, commissioning, etc. to ensure that contractors understand program requirements sufficiently for bidding purposes.
- e) Review selected bids and final contracts to ensure that they accurately reflect the final, approved design and specifications.
- f) Review the construction schedule and offer suggestions regarding timing and installation of the energy efficiency elements of the project as needed.

8. **The Partner shall submit documentation to affirm the Participant's installation of the measures meet the Program's Minimum Performance Standards, as identified in the Program Guidelines.** The Partner shall establish that the Participant has met those requirements. At the Partner's and Participant's option and in accordance with the Program Guidelines:
- a) The Partner shall perform the field inspections necessary to affirm compliance; OR
 - b) The Participant must submit written documentation to the Partner which confirms the installed measures do comply with previously reviewed and approved construction documents.
9. **The Partner shall prepare and submit post-construction submittals in accordance with the Program Guidelines applicable to each project.** The following tasks may be required to achieve this goal, depending on the Program Guidelines in effect for a particular project:
- a) Submit current utility data release forms for all applicable utilities and fuels, including those for a sampling of direct metered accounts, where applicable. Sampling requirements are defined in the Program Guidelines; and/or
 - b) Prepare and submit a post-construction Program Benchmarking Tool spreadsheet and utility bill data, using the first twelve (12) months of post-construction utility data for the Participant's facility, to calculate the current Program Benchmarking Tool score; and/or
 - c) If post-construction Benchmark score meets or exceeds the minimum performance score, prepare and submit request for the final incentive payment on behalf of the Participant in accordance with the Program Application Package signed by the Partner and Participant and using the appropriate NYSERDA Request for Incentive form.

MULTIFAMILY PERFORMANCE PROGRAM

Attachment G – Terms and Conditions



NEW CONSTRUCTION COMPONENT

*(Applies only to New Construction Multifamily Buildings
that include five (5) or more residential units)*

All documents referenced in the contract below are available on the Partner Portal located at www.getenergysmart.org or upon request by emailing MultifamilyPrograms@nyserda.org.

The terms and conditions in this Attachment are effective upon the Partner's submission of the Program Application Packet for a New Construction project on behalf of a Participant. In addition to meeting the qualification requirements and satisfying all terms and conditions identified in the main body of this Agreement, the Partner also agrees to the terms and conditions in this Attachment for any project involving New Construction that it serves under the Program

The Partner acknowledges that failure to follow Program requirements and procedures including those contained in this Agreement, Program Guidelines and associated supporting documents, and Program Announcements will result in the loss of applicable incentives to the Participant and disciplinary action to the Partner.

The Participant may, at its option, contract separately for any of the required services but the Partner is responsible to NYSERDA to ensure all Program requirements, terms and conditions are satisfied. These services can be provided directly by the Partner's employee(s), or by other individual(s) or firm(s) having the required qualifications, certifications, licenses, and/or experience. Although NYSERDA does not require the Partner to submit documentation which confirms the qualifications and/or experience required within this Attachment are met, NYSERDA reserves the right to request that verification from the Partner at any time.

The Partner shall ensure that all energy modeling tasks are completed by an individual or firm that has the necessary design experience in the new construction multifamily market as well as experience in modeling multifamily projects in an approved software tool. The Partner shall have or obtain at least three (3) relevant case studies, including references from developers, indicating previous energy efficiency consultation by the modeler on new construction multifamily projects. In addition, the Partner shall have or obtain at least three (3) energy models of commercial or multifamily projects developed by the modeler using an approved software tool.

In addition, the Partner agrees to the following:

- 1. The Partner shall be responsive to the developer and design team.** Upon receipt of a submission from the design team, the Partner should prepare and submit a response within three (3) business days.

2. **The Partner shall facilitate participation in the Program on behalf of the developer.** Facilitation efforts will include the following tasks:
 - a) Lead an initial information session with the project design team. The purpose of this session is to explain design and design review methodologies, review existing plans, and conduct an initial discussion of various design alternatives useful for meeting the performance target.
 - b) At the Participant's request, the Partner shall ensure provision of the financial and/or regulatory assistance necessary to assist the Participant's consideration of design alternatives, including assistance needed to identify any additional sources of funding necessary to fully implement a proposed design alternative. The Partner shall ensure this assistance is provided by individual(s) having the requisite knowledge and experience required to fulfill this obligation.
 - c) The Partner shall prepare and submit requests for incentive payments on behalf of the Participant in accordance with the trigger events outlined in the Program Application Packet signed by the Participant and using the appropriate NYSERDA Request for Incentive form.
 - d) Confirm the Participant is eligible to receive incentives from NYSERDA through this Program.
3. **The Partner shall, along with the Participant, participate in a Scoping Session with a NYSERDA representative.** The Scoping Session shall occur on-site to establish Participant interest, identify likely energy efficiency measures, and determine sources of potential funding.
4. **(Applicable to projects following the Performance Path only.) The Partner shall develop, or cause to be developed, energy models of the baseline and proposed design of the project to guide design decisions to achieve a Performance Target of 15% or greater, and develop the proposed Energy Reduction Plan, per the Program Guidelines.** The following tasks shall be completed to achieve this goal:
 - a) Acquire and use Program-approved software for all project models under this Program.
 - b) Meet with the design team and inform them of the drawing detail required to initiate modeling. The Partner's participation during schematic design is preferred.
 - c) Develop a simulation baseline from the design team's existing plans (schematics, initial design plans, etc.) using the ASHRAE Standard 90.1-2007 Appendix G protocol, or RESNET Home Energy Rating System (HERS) Technical Guidance where applicable, and the latest version of the Program's Simulation Guidelines to determine the initial, simulation baseline consumption (www.ashrae.org; www.resnet.us).
 - d) Engage in a series of consultations with the design team to revise or further develop the initial design to incorporate energy efficient design, practices, and equipment in order to comply with the established NYSERDA Minimum Performance Standards and achieve a Performance Target of 15% or greater.
 - e) Ensure that consultations with the design team are collaborative in nature by presenting alternatives and suggestions and working within the design team's goals for providing safe, comfortable, affordable housing.
 - f) Create a proposed design model using the ASHRAE Standard 90.1-2007 Appendix G protocol, or RESNET HERS Technical Guidance where applicable, and the latest version of the Program's Simulation Guidelines that projects the energy consumption of the proposed building design and compares it to the projected consumption of the simulation baseline.
 - g) Determine the incremental costs of each of the recommended measures by estimating the construction costs of the corresponding components in the baseline model and the construction costs of the recommended measures using the Incremental Cost Guidelines and the Program's Baseline Cost Estimator spreadsheet. Complete the RECS Benchmarking Tool spreadsheet for

both the baseline and proposed design models using the projected energy consumption from both.

- h) Prepare a report based on the Energy Reduction Plan template and submit it to the Program Implementer for review and approval.

5. The Partner shall ensure that measures recommended as part of the proposed design are reflected in the bid process and construction documents. The following tasks shall be completed to achieve this goal:

- a) Review the bid package to ensure that sufficient detail is included to sufficiently characterize the energy-related measures such that compliance with the Program's Minimum Performance Standards and Program Guidelines and appropriate construction/installation of the recommended measures can be assured.
- b) Ensure that the "Performance Specification Criteria" from the Program's System Performance Testing Protocols are reflected in the bid package.
- c) Attend the pre-bid meeting. Explain program goals and procedures to bidding contractors. Explain energy-efficiency requirements in detail, including air sealing, insulation methods, controls, commissioning, etc. to ensure that contractors understand program requirements sufficiently for bidding purposes.
- d) Review selected bids and final contracts to ensure that they accurately reflect the final, approved design and specifications.
- e) Review the construction schedule and offer suggestions regarding timing and installation of the energy efficiency elements of the project as needed.

6. The Partner shall submit documentation to affirm the Participant's installation of the measures meet Program requirements, including the Minimum Performance Standards, as detailed in the Program Guidelines.

- a) Receive and review regular (preferably weekly) field reports or other meeting notes from the construction team to ensure the Partner is aware of any changes to the proposed design of the building.
- b) Consult on procurement or installation issues of the recommended measures during construction as may be requested by the developer, design team, and/or construction team.
- c) Perform inspection and verification according to the System Performance Testing Protocols to affirm all of the recommended measures meet Program requirements and to affirm all Minimum Performance Standards have been met. At the Partner's and Participant's option and in accordance with the Program Guidelines:
 - o The Partner shall perform the field inspections necessary to affirm compliance; OR,
 - o The Participant must submit written documentation to the Partner which confirms the installed measures do comply with previously reviewed and approved construction documents.

7. (Applicable to projects following the Performance Path only.) The Partner shall prepare, or cause to be obtained, a model of the project to properly represent the as-built condition of the constructed building to confirm achievement of the Performance Target, and develop the as-built Energy Reduction Plan per the Program Guidelines. The following tasks shall be completed to achieve this goal:

- a) Update the proposed design model to reflect any proposed or actual changes in the recommended measures or costs to inform the developer on impacts to achieving the Performance Target or to the cost-effectiveness of the altered recommended measure(s).

- b) Incorporate the results of the inspection and verification on all of the recommended measures according to the System Performance Testing Protocols into the as-built model to confirm that the model assumptions accurately reflect the installed recommendations and performance metrics.
- c) Finalize the model and prepare a report based on the Energy Reduction Plan template to reflect all changes to the design and/or cost as well as the system performance results and update the projected energy consumption and incremental cost of the recommended measures of the final, constructed building.
- d) Submit the report with supporting documentations to the Program Implementer for review and approval.

MULTIFAMILY PERFORMANCE PROGRAM

Attachment H – Partner Status Designations

At any time during the term of this Agreement, based on the Partner's performance, NYSERDA may classify the Partner in one of the Partner Status Designations listed below. Each Designation shall be subject to limitations, or requirements associated with that Designation, as detailed below.

When evaluating a Partnership Application and Participation Agreement, NYSERDA may consider a Partner's past performance in determining (1) whether to sign the Participation Agreement or (2) whether to sign the Agreement provided that the Partner is assigned a certain status designation.

NYSERDA reserves the right to modify the definitions, limitations, and requirements of these Designations at any time. NYSERDA retains sole discretion for determining the Partner's progression into and through each Designation. In all cases, NYSERDA's written decision is final.

Partner Status Designations

Full

Partners not assigned any other Partner Status Designation who meet all requirements of the Program, provide quality services utilizing industry best practices, and abide by the conditions of this Agreement, shall be assigned the **Full** Partner status designation. **Full** Partners are entitled to all applicable Program benefits.

Provisional

All Partners will be assigned the status of **Provisional** if they have not satisfied one of the following two milestones:

- Partner has one (1) project achieve the Substantial Completion milestone; or
- Partner has one (1) Energy Reduction Plan approved by NYSERDA for a project brought into the Program under the current version of the Program Guidelines at time of application.

When one of these two milestones has been met, NYSERDA and its representatives shall review the Partner's performance and make a determination of the Partner's future status designation. As a result of NYSERDA's determination, the Partner may be assigned the **Full** status designation, have their **Provisional** status designation extended for an additional period of time, have their status designation changed to **Probationary**, or their Partnership Agreement may be **Terminated** for cause.

Limitations applicable to Partners on Provisional status:

- During the term of this agreement, a Provisional Partner may only submit one new application to each Component of the Program (Existing Buildings and/or New Construction). Previously approved applications will remain valid. If NYSERDA decides to extend the Provisional status designation for a Partner after the Energy Reduction Plan for their one project is approved, the Partner may submit one more new application to each Component of the Program.
- The Provisional Partner's name will be displayed on the GetEnergySmartSM Resource Locator Map but potential clients must be informed of the Partner's limitation to serve new Participants.

- Provisional Partners are not eligible for incentives related to the Co-operative Advertising Program. Provisional Partners will remain eligible for incentives related to training, certification and software.
- Projects completed by a Partner on **Provisional** status are subject to a higher level of Quality Control and Quality Assurance review.

Probationary

The status designation of **Probationary** will be based on the Partner's failure to adhere to Program policies and procedures as outlined in this Partnership Agreement or other applicable Program documents, including the current Program standards and guidelines.

A Partner may be assigned to the Probationary Partner status for any reason deemed sufficient by NYSERDA, including, but not limited to following:

- Partner has submitted incomplete Applications
- Partner has failed to meet submission deadlines
- Energy Reduction Plan submittals are deficient due to:
 - Failure to adhere to Program Rules and Program Guidelines
 - Failure to adhere to Simulation Guidelines or generally accepted analysis practice
 - Generally of such poor quality that technical review is not considered possible
 - Existing conditions are not accurately represented in ERP
- Partner consistently repeats mistakes in work product
- Partner has failed to address issues identified during QC conference
- NYSERDA cannot approve Payments #2 and #3 after completing a site inspection (due to misrepresentation of progress, installations not meeting Minimum Performance Standards or other Program requirements)

Disciplinary Action and limitations applicable to Partners assigned Probationary include, but are not limited to, the following:

- Probationary Partner may not submit new applications to the Program. Previously approved applications remain valid and are not affected by this limitation. If a Probationary Partner has no active projects when assigned to Probation, NYSERDA may choose to allow the Partner to submit one new application to the Program on behalf of an applicant in order to demonstrate improvement.
- The Probationary Partner's name will be removed from the GetEnergySmartSM Resource Locator Map and lists of Partners available to the general public.
- Probationary Partners are not eligible for incentives related to the Co-operative Advertising Program. Partners will remain eligible for incentives related to training, certification and software.
- Projects completed by a Partner on **Probationary** status are subject to a higher level of Quality Control and Quality Assurance review.

Termination

Termination of a Partner ends its relationship with the Program.

NYSERDA has sole discretion in determining whether to terminate a Partnership Agreement. Grounds for the termination shall include, but are not limited to, the following:

- Partner is on Probation and has either been unresponsive to, or failed to adequately fulfill, the terms of its probation.
- Partner has misrepresented the Program, its relationship to the Program, or information about the Program, to potential or existing Participants
- Partner submitted false or inaccurate documents (i.e. false or unauthorized)
- Partner misrepresents projects to Program staff
- Partner's conduct is not professional and respectful
- Partner is not a good ambassador to the Program
- Program receives legitimate and serious complaint(s) about the Partner from current or prospective Participants

Disciplinary Action and limitations applicable to Partners following Termination:

- The **Terminated** Partner may be prohibited from completing Program work in progress.
- The **Terminated** Partner will be removed from the GetEnergySmartSM Resource Locator Map.
- The **Terminated** Partner will not be eligible for Partner incentive reimbursement.
- Participants currently under contract with a **Terminated** Partner will be notified that the Partner has been **Terminated** and be provided options for remaining in the Program.