

Green Jobs – Green New York Loan Fund – Residential Financing Participation Agreement

January 1, 2020 – December 31, 2021

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Definitions:

Certificate of Completion:

The Green Jobs - Green New York Loan Fund Residential Financing Certificate of Completion which is executed by a Customer attesting that all work has been completed pursuant to the contract.

Green Jobs Green New York Loan (GJGNY Loan):

An unsecured loan up to twenty-five thousand (\$25,000) dollars for one-to-four family residential energy improvements with a term not to exceed fifteen (15) years. See Manual for detailed information.

Implementation Contractor:

Organization working under contract with NYSEERDA to provide administrative and support functions such as loan origination, loan servicing, reporting, invoicing and installation verification.

Participation Agreement:

This Participation Agreement ("Agreement") establishes the terms and conditions under which Participating Contractors may offer a GJGNY Loan to qualified customers in New York State.

Participating Auditor:

Participating Auditors are companies or organizations that meet the participation criteria as detailed in the Residential Energy Audit Program Participation Agreement, the Program Manual and any Program announcements and have been approved by NYSEERDA to offer Residential Energy Audits. All participating contractors in the Residential Existing Homes Program are qualified as Participating Auditors.

Participating Contractor:

Participating Contractors are independent contractors approved to offer GJGNY financing or who participate in the Residential Existing Homes Program or is a participating contractor with PSEG-Long Island.

Proforma:

Proforma is a tool which lists eligible energy efficiency measures, equipment and accessories. The Proforma determines if the selected measures meet GJGNY Loan cost effectiveness requirements.

Residential Energy Audit:

An energy audit conducted by a Participating Auditor in accordance with the policies and procedures detailed in the Residential Energy Audit Participation Agreement, the Residential Energy Audit Program Manual and any Residential Energy Audit Program announcements.

Article I. General Information

The New York State Energy Research and Development Authority (“NYSERDA”) administers the Green Jobs - Green New York (“GJGNY”) Loan Fund for Residential Financing (the “GJGNY Loan Fund”) which was authorized by Title 9-A of Article 8 of the Public Authorities Law of the State of New York, as amended (known as the Green Jobs-Green New York Act) to finance energy audits and energy efficiency retrofits or improvements, including solar energy and other renewable installations, for the owners of residential 1-4 family buildings (“GJGNY Loan”).

Participating Contractors can offer a GJGNY Loan to a residential customer (“Customer”) to install eligible energy efficiency measures. This Agreement establishes the terms and conditions for contractors to offer GJGNY Loans to Customers. The Participating Contractor will also have to execute a separate participation agreement with NYSEERDA’s Loan Originator. This agreement does not cover the following programs: NYSun, Air Source Heat Pump, Ground Source Heat Pump or Renewable Heat NY.

A contractor is considered and referred to as a “Participating Contractor” hereinafter, only when this Agreement is fully executed by NYSEERDA.

Article II. Participation Requirements

Section 2.01 Requirements

The Participating Contractor shall maintain the minimum certifications outlined for at least one of the participation levels listed below. By entering into this Agreement, the Participating Contractor authorizes NYSEERDA to share and obtain information with and from the Building Performance Institute (BPI) and other certifying bodies for the purpose of verifying employee certifications and work quality. As a minimum requirement to perform audits or energy efficiency work through the Program, the Participating Contractor must employ staff with the required certifications outlined below. NYSEERDA may modify or update these requirements at any time, Per Section 4.04 of this Agreement.

(a) **Audit Contractor-** Reserved for Participating Contractors performing audits and/or electric reduction direct install projects only. Audit Contractors must maintain a minimum of one full time staff member with one of the following certifications.

- (i) BPI Building Analyst
- (ii) BPI Energy Auditor
- (iii) BPI Multifamily Building Analyst
- (iv) AEE Certified Energy Auditor
- (v) ASHRAE- Building Energy Assessment Professional
- (vi) HERS Rater
- (vii) LEED Rater
- (viii) ICP Quality Assurance (QA) Assessor

(b) **Participating Contractor-** Reserved for Participating Contractors performing audits and maintaining the certification requirements for one or more of installation services outlined below. In order to install measures through the Program, the Participating Contractor must be an Audit Contractor in accordance with (a) above and have the certification

required for that specific measure and provide the Program with a minimum of 6 months experience in installing that measure type as outlined in Section 3.01(b). In addition to measure certification, it is highly recommended the Participating Contractor pursue any manufacture's training/certifications for any equipment they are installing as part of a Program project. Participating Contractors must maintain one or more of the specialty certifications listed below:

1) Shell/Envelope

- (i) BPI Envelope Professional

NYSERDA will consider the following BPI advanced certifications in lieu of BPI Envelope Professional, provided the Participating Contractor can meet Program requirements, as outlined in Section 3.01(b) of this Agreement:

- (i) BPI Crew Leader or
- (ii) BPI Energy Auditor or
- (iii) BPI Quality Control Inspector or
- (iv) BPI Retrofit Installer Technician

2) Central Air Conditioning

- (i) BPI AC/Heat Pump or
- (ii) NATE AC or
- (iii) NATE Heat Pump

3) Air Source Heat Pump/Heat Pump Water Heater

- (i) BPI AC/Heat Pump or
- (ii) NATE Heat Pump or
- (iii) Approved Installer in NYSERDA's Air-Source Heat Pump Program Opportunity Notice (PON) 3653

4) Oil Heat Work

- (i) BPI Heating Professional or
- (ii) NATE Oil Heating or
- (iii) NORA Oil Heat Silver or
- (iv) NORA Oil Heat Gold

5) Manufactured Homes (Mobile Homes)

- (i) BPI Manufactured Housing Professional Certification
- (ii) Provide documentation of your company's detailed procedures for serving manufactured homes. Detail provided must be enough to demonstrate to Program staff that the applicant exhibits proficiency with installing energy efficiency measures in manufactured housing stock. NYSERDA reserves the right to request additional supporting information as necessary to establish a contractor's experience. Acceptable documentation should include:
 - a. Type of work performed (Insulation/mechanicals)
 - b. Materials used
 - c. Number of manufactured homes served in last 6 months
 - d. Installation methods
 - e. Any manufactured home-specific training received in the past 36 months

6) Gas Heat Work/Domestic Hot Water Heaters

- (i) BPI Heating Professional or
- (ii) NATE Gas Heating

(c) Change in Participation Level

NYSERDA will review Participating Contractor's Program status periodically. In the event a contractor no longer maintains the minimum credentials type, they will be classified to the previous qualifying level, providing they still meet the minimum requirements for Program participation. For example, if a **Participating Contractor** loses their specialty certification but retains BPI Building Analyst, they will be considered an **Audit Contractor**.

Section 2.02 Certified Staff

Contractors may only complete work for which they have proper credentials, as defined in the section above. The certified staff employed by a Participating Contractor shall ensure that work performed in the Program adheres to the technical standards established and maintained by BPI or the credentialing organization, for each certification and meet the Program requirements outlined in the Contractor Resource Manual and MIG.

Per Section 3.01(b), the Participating Contractor shall provide NYSERDA written documentation that identifies each individual in the Contractor's business and their certifications. As an ongoing requirement, the Participating Contractor shall immediately inform the Program of any change to the list of certified staff.

Section 2.03 Service Territories

Participating Contractors may choose to serve specific market regions, counties, or a defined radius from their office. The Participating Contractor shall dedicate sufficient staff with Program approved certifications for each approved service territory. The Participating Contractor shall employ at least one individual meeting the certification requirements of Section 2.01 per 75-mile radius.

The Participating Contractor shall only offer Program services in approved Program service territories listed on the fully executed Participation Agreement on file with NYSERDA or as approved through a separate communication submitted to NYSERDA. The Participating Contractor shall not offer or provide Program incentives in other territories where it does not have prior approval from NYSERDA. The Participating Contractor may submit a request to provide services to additional locations outside their approved Program service territories. The decision to allow a Participating Contractor to expand its Program service territory is at the sole discretion of NYSERDA.

Section 2.03 Licensing

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

Section 2.04 Permits

It is the sole responsibility of the Participating Contractor and its sub-contractors to obtain and comply with the terms of any required permits for installing measures eligible for a GJGNY Loan prior to the start of work. The Participating Contractor shall produce evidence of applicable permits upon request by NYSERDA or an Implementation Contractor. Failure to comply with permitting requirements may result in disciplinary action.

Section 2.05 Codes

All Participating Contractors and any sub-contractor retained by a Participating Contractor must perform work in compliance with all applicable codes, regulations, laws, and standards in the jurisdiction where completing work.

Section 2.06 Insurance

- a) The Participating Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in this Section. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement; name or be endorsed to cover the Participating Contractor as the insured, and NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and be reasonably satisfactory to NYSERDA in all other respects. NYSERDA reserves the right to request insurance documentation and copies of sub-contractor agreements for any sub-contractor, and to request the identity of all participating individuals.

The types and amounts of insurance required to be maintained under this Section are as follows: (1) commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster, and (2) Workers' Compensation coverage as required by New York State.

Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Participating Contractor shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Participating Contractor shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not make payments for projects completed under this Agreement without current insurance certificates.

- b) In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, the Participating Contractor shall deliver to NYSERDA a certified copy of each policy upon request.

Within five working days, or contemporaneously with the requirements of each insurance policy, the Participating Contractor shall notify NYSERDA in writing of the occurrence of

any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Participating Contractor, any non-Customer party to the applicable Program participant agreement or NYSERDA.

Section 2.07 Workers' Compensation

The Participating Contractor shall maintain Workers' Compensation covering the obligations of the Contractor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.

If a Participating Contractor is identified as a Sole Proprietor, the contractor must complete and submit form CE-200: <https://ce-200-form.com/>.

The Participating Contract must provide proof of Workers' Compensation upon request by NYSERDA.

Section 2.08 Warranty

The Participating Contractor shall provide the Customer a written warranty of labor and materials valid for a minimum of one (1) year from the date that final documentation is submitted for payment. Equipment installed shall carry at a minimum the manufacturer's warranty, plus optional extended warranty coverage, if applicable. The Participating Contractor must provide copies of all relevant warranties to the Customer.

Section 2.09 Financing Program Participant Issues and Dispute Resolution

NYSERDA requires the Participating Contractor to maintain a dispute resolution policy on file. If a Participating Contractor, or its sub-contractor, becomes involved in a dispute with a Customer over business practices, the Participating Contractor shall work to settle the dispute amicably utilizing the Participating Contractor's dispute resolution policy.

NYSERDA may request a copy of the Participating Contractor's dispute resolution policy at any time.

NYSERDA and its Implementation Contractors have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Participating Contractor shall hold NYSERDA and its Implementation and External Contractor(s) harmless from any legal action arising from work funded with a GJGNY Loan per Section 7.09 of this Agreement. Failure to resolve issues in a timely manner may result in disciplinary action.

Section 2.10 Financing

The Participating Contractor shall ensure that the GJGNY Loan options are used only for the installation of the eligible measures and accessories identified in the Proforma submitted to the Loan Originator.

Article III. General Application Information

Section 3.01 Application Requirements

The applying contractor ("Applicant") shall provide NYSERDA the information below when submitting the Participation Agreement Application Signature Form, as requested by

NYSERDA, or when there are changes or updates to the information previously provided.

- (a) Completed Participation Agreement Application Signature Form: The Applicant must read and submit the completed Agreement Application Signature Form to NYSERDA indicating agreement with its terms. The Agreement Application Signature Form must be submitted by an individual with the full power and authority to enter into an Agreement on behalf of the company.
- (b) Detail of company and staff experience in the residential energy efficiency sector. This is a requirement for all new Applicants and for returning Applicants at NYSERDA's request.
 - (i) Employee roster of both certified and non-certified employees providing work experience, previous firms worked at and training. The contractor must provide sufficient information for NYSERDA staff to make a determination on the qualifications of a contractor to perform work. It is NYSERDA's sole discretion to request additional information as necessary for determining the eligibility of an applicant in meeting the requirements of Section 2.01 of this Agreement.
- (c) Certificate of Insurance
- (d) DBA form (if applicable)

Section 3.02 Evaluation Criteria for Contractor Acceptance

NYSERDA will evaluate the information provided on the Participation Agreement Application Signature Form and review all submitted documentation prior to approving an Agreement. NYSERDA will not make a determination on any Participation Agreement until all the requested information is received by NYSERDA from the applicant. The decision to fully execute an Agreement is at NYSERDA's sole discretion.

- (a) For both new Applicants and returning Applicants including those from other NYSERDA programs, key evaluation criteria include, but are not limited to the following:
 - (i) The Applicant's commitment to fair and ethical business practices as demonstrated through references and review of other resources including, but not limited to, the Better Business Bureau, NYS Department of Labor, and crowd-sourcing websites.
 - (ii) Documented experience with advanced building science methods, as demonstrated through proof of professional certifications, training certificates, awards and review of provided company information and information publicly available.
 - (iii) Documentation for certifications to related trainings (such as BPI, SPFA, NATE, NORA, manufacturer's installation certification).
- (b) For returning Applicants, the past performance of the applicant and/or certified individuals offering GJGNY Loans or participation in other NYSERDA programs which may include but is not limited to:
 - (i) The quality of workmanship documented through Quality Assurance (QA) / Quality Control (QC) / verification processes.
 - (ii) Demonstration of the Applicant's ability to properly, and consistently, follow policies and procedures.

- (iii) Satisfactory and expedient resolution of non-conformances discovered during QA field inspection(s).
- (iv) Satisfactory and professional interaction with NYSERDA staff, Customers, other Participating Contractors and Implementation Contractors.
- (v) Satisfactory record of fair and ethical business practices.
- (vi) Responsiveness to Customer complaints, Implementation Contractor inquiries, and NYSERDA directives.
- (vii) Contractors who have been suspended or terminated from any NYSERDA program.

Article IV. Agreement Terms

Section 4.01 Program Participation Terms

Upon entering the Agreement, each Participating Contractor shall commit to promoting GJGNY Loans.

The Contractor acknowledges this Agreement is completely voluntary. NYSERDA may deny an Applicant's approval or terminate a Participating Contractor from offering GJGNY Loans, including failure to maintain standards, poor performance, unresponsiveness or inappropriate behavior. In all cases involving a Contractor's participation status, NYSERDA's written decision is final.

As a condition for offering GJGNY Loans and associated benefits, each Applicant and Participating Contractor understands and agrees to the terms and conditions outlined in this Agreement and any GJGNY Loan Announcements distributed and/or posted by NYSERDA or an Implementation Contractor.

Section 4.02 Enforcement

In all cases, or at any time, NYSERDA's failure to enforce any provisions of this Agreement shall not constitute a waiver of such provisions, nor does it limit NYSERDA's ability to enforce such provisions in the future.

Section 4.03 Financing Program Changes

NYSERDA reserves the right to make changes upon notice to the Participating Contractor. Programmatic changes announced through GJGNY Loan Fund announcements will supersede policies and procedures in this Agreement. Such notifications shall be communicated via email. It is the Participating Contractor's responsibility to ensure the appropriate contact's email address is on file with NYSERDA in the event of staff additions/losses or responsibility changes.

Section 4.04 Post Termination Obligations

Articles VI, VII, IX and X and Sections 2.06 (b) and 2.08 shall survive termination of this Agreement.

Article V. Benefits

The Participating Contractor is entitled to the following benefits:

- (a) Access to the GJGNY Loan Fund to fund eligible measures for Customers;

(b) Prompt payment for eligible financed projects.

Article VI. Contractor Relations with Customers

Section 6.01 Customer Inquiries

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

Section 6.02 Timely Communication

Participating Contractors shall ensure prompt and accurate reporting of all project completions for projects financed with a GJGNY Loan as defined in Section 3.3 of the Green Jobs Green New York Loan Fund Residential Financing Implementation Manual (“Implementation Manual”). Participating Contractors shall respond to inquiries from Customers, NYSERDA staff, and Implementation Contractors in a prompt, professional, and courteous manner.

Article VII. Business Practices

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

Section 7.01 Contract Compliance

It is the sole responsibility of the Participating Contractor to ensure that all contracts and subcontracts submitted to the Loan Originator by the Participating Contractor are written in full compliance with the General Business Law, Article 36-A “HOME IMPROVEMENT CONTRACTS” and any other applicable statutory or regulatory provisions. Contracts and other documents submitted by the Participating Contractor must be clear and legible, and include line item detail for each installed measure, including nameplate and efficiency information. The measured square footage of all areas to be insulated and lineal footage for all air sealing should be clearly identified. Pricing, depth, type and quantities for each measure should be clearly identified. Any changes to the contract should be identified in a field change order, signed by the Customer and submitted as part of the required Program paperwork.

Upon request by NYSERDA or Implementation Contractor staff, the Participating Contractor shall provide additional details regarding contractual terms and costs for the purposes of project review.

Section 7.02 Professional Conduct

The Participating Contractor shall comply with all requirements, treat all Customers fairly, provide accurate information on all available GJGNY Loans and deliver promised services in a timely, competent, professional, and reasonable manner.

Section 7.03 Professional Courtesy

Participating Contractors shall conduct themselves in a professional, respectful, and reasonable manner at all times when interacting with Customers, NYSERDA staff, and Implementation Contractors. Participating Contractors shall not engage in behavior that adversely impacts NYSERDA or other Participating Contractors, tarnishes NYSERDA’s service marks, and/or

diminishes the profession or service in the eyes of the public.

Section 7.04 Past Performance

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

Section 7.05 Program Representations

The Participating Contractor shall not engage in unfair or inaccurate representations of NYSERDA, the GJGNY Loan Fund, the Implementation Contractors, other Participating Contractors or affiliates.

Participating Contractor

The Participating Contractor shall properly and accurately represent the relationship of the Participating Contractor and its sub-contractor(s) to the State of New York, NYSERDA, and NYSERDA's Implementation Contractors. This relationship shall be that the Participating Contractor currently meets participation requirements, acts as independent contractor, and voluntarily offers GJGNY Loans.

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

A Participating Contractor employing the services of sub-contractors shall ensure each sub-contractor adheres to GJGNY Loan Fund policies and standards.

Use of Sub-Contractor

It is the Participating Contractor's responsibility to make their sub-contractors are aware that a non-participating sub-contractor shall not represent itself as able to offer a GJGNY Loan. Additionally, any sub-contractor of a Participating Contractor shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Implementation Contractors.

The Participating Contractor assumes all responsibilities for services provided by sub-contractors. The Participating Contractor shall ensure non-participating sub-contractor compliance with BPI, required certifications, licenses, permits and/or GJGNY Loan Fund policies and standards.

Section 7.06 Proper Use of Program Marketing Material

(a) Website Content

The Participating Contractor shall avoid publishing specific GJGNY Loan Fund options

and requirements and uploading copies of NYSERDA forms and applications on their individual company websites. Instead, Participating Contractors are encouraged to provide links directly to pertinent content, forms, and applications on NYSERDA's website to ensure the information provided is consistent and up to date for all interested parties.

Participating Contractors shall address any GJGNY Loan Fund changes that may affect the content on their websites in a timely manner.

(b) Logo Policy

Participating Contractors may request permission to use NYSERDA's Attribution Logo. Participating Contractors are not NYSERDA employees, contractors, partners, or representatives. Participating Contractors and their employees must therefore identify themselves as representatives of the Participating Contractor's company, not as representatives of NYSERDA or as NYSERDA employees.

Full details and instructions for requesting permission to use NYSERDA's logo are included in Section 7 of the Implementation Manual.

(c) Use of Financing Program Reference

Should the Participating Contractor no longer offer GJGNY Loans, they are required to immediately inform NYSERDA and remove all references to NYSERDA and the GJGNY Loan Fund. See Section 3.1 of the Implementation Manual for NYSERDA contact information.

Section 7.07 Computer, Operating System, and Internet Access Requirements

(a) Minimum Requirements

The Participating Contractor shall have access to a computer with an operating system capable of running any required and necessary software. The Participating Contractor shall have an active email account(s) with the ability to receive emails from NYSERDA, the Implementation Contractor(s) and the External Contractor and check email on a regular basis for GJGNY Loan Fund announcements and other communications. The Participating Contractor shall ensure the email addresses on file with NYSERDA are current and must identify a GJGNY Loan contact, verification contact and webmaster (if applicable). The Participating Contractor shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary.

The Participating Contractor is prohibited from downloading any type of hacking tools, including, but not limited to, network sniffers, vulnerability scanners, or password cracking tools.

(b) Proforma

Participating Contractor shall use the available Proforma tool which may be updated from time-to-time. The Proforma shall be completed and submitted to the Loan Originator for each project that is requesting a GJGNY Loan. Projects must meet cost effectiveness requirements which are included in the Proforma.

Section 7.08 Customer Personal Private Information

(a) Program Communications

All Participating Contractors and sub-contractors performing work in association with the GJGNY Loan Fund are required to comply with the [NYSERDA External Contractor Data Security and Controls Policy](#). In general, when corresponding with Customers, Implementation Contractors, and NYSERDA, use the NYSERDA External Contractor Data Security and Controls Policy to determine the type of Customer information that can be shared based on the platform being used. To minimize the occurrence of incoming emails containing confidential information, please instruct Customers to redact utility account numbers, social security numbers and bank account numbers if you are requesting documents containing this information. Participating Contractors who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.

Section 7.09 Standard Terms and Conditions

(a) Relationship of the Parties

It is understood and agreed that the personnel furnished by the Participating Contractor to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be the Participating Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of the Participating Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and the Participating Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

(b) No Benefits

The Participating Contractor agrees that the personnel furnished by the Participating Contractor are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, the Participating Contractor acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. The Participating Contractor agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.

(c) Notification of Claims/Events

The Participating Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, the Participating Contractor and/or a member of a Participating Contractor's staff. Accordingly, the Participating Contractor expressly

covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon the Participating Contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

(d) Information

The Participating Contractor shall not use information obtained from NYSERDA or NYSERDA's designees in conjunction with the GJGNY Loan Fund for any purpose other than to implement obligations under this Agreement.

The Participating Contractor acknowledges that information obtained from NYSERDA, or NYSERDA's designees, may include certain information concerning the GJGNY Loan Fund or Customers that is non-public, confidential, or proprietary in nature. The Participating Contractor agrees such information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by the Participating Contractor, its agents, employees, contractors, or professional advisors, other than is expressly required to implement its obligations under this Agreement.

(e) Indemnification

The Participating Contractor shall protect, indemnify and hold harmless NYSERDA, its Implementation Contractors, and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York, resulting from, arising out of or relating to Participating Contractor's or its sub-contractor's performance of this Agreement. including, but not limited to, any claim or suit resulting from or related to mildew, fungus, moisture intrusion or mold of every type and nature. The obligations of the Participating Contractor under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

Article VIII. Project Requirements

The Participating Contractor acknowledges that failure to follow requirements and procedures, including the submittal of the Proforma, executed construction contract, change orders signed by the Customer and Certificate of Completion will result in disciplinary action.

Section 8.01 Home Energy Assessment/Audit Process and Report

To pursue a GJGNY Loan, a Customer must have a Residential Energy Audit or Assessment that identifies the energy services to be undertaken. The audit must be performed under the Residential Audit Program or the assessment must be performed under the Existing Homes Program.

Section 8.05 Project Submittal Review, Work Stoppage, and Completion

The Participating Contractor shall only submit work under the organization name that is on file with NYSERDA in the fully executed Agreement. Additionally, the energy efficiency measures that are included in the GJGNY Loan shall include only measures identified as eligible in the Proforma.

For each project expected to receive GJGNY Loan funding, the following steps must occur in the order listed:

(a) Project Submittal

The Participating Contractor shall only submit projects that comply with the policies set forth in this Agreement, Implementation Manual, and any applicable GJGNY Loan Fund announcements. The Loan Originator will reject non-compliant project submittals.

Prior to project commencement the Participating Contractor shall submit to the Loan Originator:

- i. A fully executed contract between the Participating Contractor and Customer; and,
- ii. A completed Proforma.

Upon issuance of change order increasing the project cost and the GJGNY Loan the Participating Contractor shall submit to the Loan Originator:

- i. A fully executed change order between the Participating Contractor and Customer; and,
- ii. An updated and completed Proforma.

In such instances, the Loan Originator will provide the Customer with a new set of loan documents for signing.

(b) Project Review

Any project that has been partially or fully completed prior to the Loan Originator's review and approval of the GJGNY Loan is at the Participating Contractor's risk. In these cases, the Participating Contractor shall assume all financial liabilities associated with these projects (i.e. Customer financing).

(c) Work Stoppage

If a Participating Contractor discovers a deficiency that prevents the energy efficiency work from being completed, the Participating Contractor will stop all work that is affected by the deficiency; notify the Customer of the deficiency; explain that the energy efficiency work cannot resume until the deficiency is addressed; discuss restoration of the affected areas with the Customer; and, if agreed to by the Customer, restore the affected areas.

If the Participating Contractor stops all work, it may be necessary for the Participating Contractor or the Customer to request an extension of the GJGNY Loan pre-approval from the Loan Originator.

(d) Project Completion

Upon completion of a GJGNY Loan funded project, the Participating Contractor shall

submit to the Loan Originator a Certificate of Completion executed by the Customer. The Certificate of Completion must be submitted to the Loan Originator within 30 calendar days following project completion. Loan funds will not be disbursed until an executed Certificate of Completion is received by the Loan Originator.

A Certificate of Completion received after the 30 day deadline may be denied financing, and the Participating Contractor will assume all financial liabilities for the project.

Section 8.06 Eligible Measures

The Participating Contractor shall ensure that a GJGNY Loan is utilized only for the installation of eligible measures and accessories identified on a project. A list of eligible measures is listed on the Proforma and information on GJGNY Loan options can be found in the Implementation Manual.

Section 8.07 Pricing

The Participating Contractors shall apply fair and reasonable pricing when providing GJGNY Loan funded services, including sub-contracted services, for the installation of Eligible Measures.

Section 8.09 Customer Contribution

The Customer is responsible for the cost of work and the Participating Contractor must clearly state the Customer's contribution in the Proforma and in the contract. The Participating Contractors must not inflate costs and must not change the required Customer contribution on the Proforma. Participating Contractors found inflating costs or modifying the required Customer contribution to qualify for a GJGNY Loan may result in disciplinary action in accordance with Section 10.01.

Section 8.10 Project Payment Processing

It is expressly understood that NYSERDA and the Loan Originator will not initiate the disbursement of GJGNY Loan funds to a Participating Contractor until all required project documentation has been received and verified as accurate. The list of required project documentation is identified in Section 8.05(a).

Article IX. Verification

The goal of the verification process is to confirm that GJGNY Loan funded energy efficiency measures have been installed.

The Participating Contractor shall not inhibit or discourage Customers from participating in the verification process and shall make a good faith effort to facilitate this process. The goal is to conduct verifications within 90 days from the signing of the Certificate of Completion. Additionally, projects completed for more than one year may be subject to verification at NYSERDA's discretion.

Article X. Participating Contractor Status Designations

Section 10.01 Participation

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

(a) Provisional

(i) Minimum Period of Performance

The Participating Contractor shall have the participation status of 'Provisional' during, at a minimum, the first 6 months of participation. During this time, NYSERDA may limit the number of projects a Provisional Contractor can submit for a GJGNY Loan as determined based on reported and founded Customer complaints or failed verification field inspections, or other compliance issues deemed by NYSERDA as cause for limitation.

(ii) Verification

Verification of installed and completed measures shall occur for the first three completed projects. Quality Assurance inspections for any other NYSERDA program shall not be used to fulfill this requirement.

(iii) Benefits

Participating Contractors with a status of 'Provisional' are entitled to all applicable benefits described in Article V.

(iv) Past Participants

Contractors renewing their Participation Agreements who have not completed a minimum of 12 projects during the past 12 months may, at NYSERDA's discretion, be re-designated as Provisional and be required to meet the above criteria to be considered "Full" status.

At any time during, or at the end of a Participating Contractor's Provisional period, NYSERDA can change the Participating Contractor's status to Probation, Suspension, or Termination for any reason including, but not limited to poor workmanship, lack of responsiveness, Customer complaints, or unprofessional behavior.

(b) Full

A Participating Contractor who is not operating under any of the other status designations described herein, abides by the conditions of this Agreement shall have the status designation of Full Status Contractor. Full Status Contractors are entitled to all applicable benefits described in Article V. Full Status Contractors verification rate is up to three (3%) percent or at least once a quarter of all GJGNY Loan funded projects. Quality Assurance inspections for any other NYSERDA program shall not be used to fulfill this requirement.

(c) Inactive

Includes Participating Contractors voluntarily deciding to stop offering GJGNY Loans to Customers and Participating Contractors terminated for disciplinary reasons. A contractor with an Inactive status will relinquish all privileges associated with participation. The contractor must immediately remove any reference to the GJGNY Loan Fund from any of the contractor's materials.

(i) Inactive-Voluntarily Withdrawal- Participating Contractors voluntarily deciding to stop offering GJGNY Loans will be placed in Inactive status. To resume participation, the Contractor may offer Customers GJGNY Loans, at NYSERDA's sole discretion, within 30 days without penalty, providing there have been no significant changes to the Contractor's staff or certifications. After 30 days the Contractor will need to apply as a new contractor and if accepted, will have a "Provisional" status.

(ii) Inactive-Terminated- Contractors designated with the 'Terminated' status are prohibited from offering Customers GJGNY Loans for the remainder of the Participation Agreement term. A Terminated Contractor shall be removed from the NYSERDA website and shall not represent themselves as a Participating Contractor, offer Customers a GJGNY Loan, nor submit new projects to the Loan Originator to be financed with a GJGNY Loan. A Terminated Contractor's Customers will not have access to the GJGNY Loan Fund. All references to NYSERDA must be removed from all marketing materials, vehicles, and advertising including vehicle clings and websites, as applicable.

Customers with incomplete projects at the time of Contractor termination will be notified that the Contractor is no longer a Participating Contractor and may be offered such remedies as NYSERDA deems appropriate. If appropriate, NYSERDA may notify the New York State Attorney General, the New York State Department of Labor, the Better Business Bureau, BPI, or others of NYSERDA's findings and decision to terminate the Participating Contractor. Further, a Participating Contractor who hires the officers, owners or other staff of a Terminated Contractor risks disqualification of offering Customers a GJGNY Loan at NYSERDA's sole discretion. In the event a Terminated Contractor's company is sold to new owners, the company must reapply; the use of the terminated Company's name, or similar derivations, will be allowed at NYSERDA's discretion. Nothing in this process relieves the Terminated Contractor of the responsibility to fulfill any remaining obligation to the GJGNY Loan Fund or Customers.

NYSERDA has sole discretion in determining whether to terminate a Participating Contractor. A Participating Contractor may be terminated for any of the following reasons:

- a. Maintaining a suspended status for more than 30 days and is unresponsive to or failed to adequately fulfill the terms of their suspension
- b. Failure to maintain minimum credentials for participation

- c. Submits falsified documents or unauthorized signatures
- d. Commits illegal actions
- e. Is convicted or has a principal who is convicted of a criminal charge that casts NYSEDA in negative light or calls the integrity or workmanship of the Participating Contractor into question
- f. Is in gross violation of GJGNY Loan Fund standards
- g. Repeatedly bills for uninstalled measures
- h. Fails to meet the terms of the Provisional period

(d) Disciplinary Action

A Full Status Contractor who fails to comply with any of the terms of this Agreement or the Implementation Manual, or who provides fraudulent or misleading documentation, is subject to disciplinary action. Participating Contractors under disciplinary action have been notified in writing by NYSEDA and are under disciplinary action for a set time frame or until the conditions of their disciplinary action notice have been met.

NYSEDA reserves the right to impose any of the following disciplinary measures at any time. In addition, NYSEDA reserve the right to hold approvals on all submissions while investigating alleged issues. In all cases involving a Participating Contractor’s disciplinary status NYSEDA’s written decision is final.

(i) Probation

Probationary Status is reserved for Participating Contractors that have failed to meet the requirements of this Participation Agreement or the Implementation Manual. Probation is prescriptive in nature with both a specific list of results to be achieved and a time frame for achieving those results.

- a. **Minimum Period of Performance-** A Probation period will last no less than 60 days with terms outlined in the disciplinary action letter.
- b. **Program Benefits-** Under the Probation Status, the Participating Contractor’s Customers will have access to the GJGNY Loan Fund.
- c. **Verification-** Under the Probation Status, the Participating Contractor, may be subject to increased verification rates that, if applicable, will be defined in the terms of their disciplinary action letter.

A Participating Contractor may be placed on Probation for any of the following reasons:

- a. **Violation of Policies and Procedures or Ethical Standards-**The Participating Contractor has failed to adhere to policies and procedures as outlined in this Agreement. This includes but is not limited to poor or unclear contract or change order documents, misrepresentation of the GJGNY Loan Fund, repeated submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, requires an excessive amount of administrative support, or failure to submit overpayment reimbursements in a timely manner.

- b. Failure to Maintain Credentials-** Participating Contractor does not maintain the minimum credentials required for participation as outlined in Section 2.01.
- c. Failure to meet Verification Requirements-** Failure to consistently deliver completed projects which pass verification.
- d. Unprofessionalism-** Contractors exhibits repeated unprofessionalism in interactions with NYSERDA Staff, Implementation Staff, or Customers.
- e. Unresponsive to Failed Verification Report Resolution-** Three (3) or more failed verification reports that have not been responded to or remain unresolved for more than 30 days.
- f. Customer Complaints-** NYSERDA or Implementation Staff have received one or more Customer Complaints regarding contracted but uninstalled measures, the Participating Contractor is unresponsive or slow in resolving these Customer issues or has an unprofessional manner on one or more projects.
- g. Contractor is Not Licensed/Not Obtaining Proper Permits-** NYSERDA is informed that the Participating Contractor performed work in a municipality they are not licensed to work in. The Participating Contractor performs work without obtaining the proper permits as required by the governing municipality.

In the event a Participating Contractor is placed on probation and fails to meet the terms of the Probation within six months of the issuance date of the letter, NYSERDA, at its discretion, may elect to Suspend or Terminate the Participating Contractor for failure to meet the terms of Probation.

(ii) Suspension

A Suspended Participating Contractor shall be removed from the NYSERDA website and shall not represent themselves as a Participating Contractor, submit any projects for a GJGNY Loan, except in the execution of remedial action as approved by NYSERDA. A Suspended Participating Contractor's Customers will not have access to the GJGNY Loan Fund. NYSERDA has sole discretion in determining whether to suspend a Participating Contractor. With NYSERDA permission, a Suspended Contractor may be allowed to close out in progress projects. Projects may be subject to increased verification rates that, if applicable, will be defined in the terms of their disciplinary letter. NYSERDA has sole discretion in determining the length of the Suspension Period. Grounds for suspension shall include, but are not limited to, the following:

- a. Unresponsive-Probation-** The Participating Contractor is on Probationary status and has either been unresponsive to, or failed to adequately fulfill, the terms of their probation.
- b. Unresponsive-Other-** The Participating Contractor is unresponsive to addressing outstanding Customer complaints regarding contracted but uninstalled measures, over payment reimbursements or requests from NYSERDA or Implementation Contractors.
- h. Violation of Program Policy and Procedures or Ethical Standards-** Participating Contractor has failed to adhere to policies and procedures as

outlined in this Agreement. This includes but is not limited to poor or unclear contract or change order documents, misrepresentation of the GJGNY Loan Fund, repeated submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, requires an excessive amount of administrative support, or failure to submit overpayment reimbursements in a timely manner.

- c. Contractor Staffing-** The Participating Contractor has staffing changes or staffing certification status changes resulting in the contractor not maintaining the minimum certification requirements.
- d. Misrepresentation-** The Participating Contractor has submitted false or fraudulent documentation at any time. This includes, but is not limited to, forging Customer signatures, falsifying existing onsite conditions, not installing measures that were contracted for and paid for with a GJGNY Loan.