



EmPower +
Appliance Vendor Agreement
Effective July 2023

Appliance Vendor:
(hereinafter "Vendor")

Street Address:

City:

State:

Zip:

County:

Primary Contact:

Job Title:

Telephone Number:

Email Address:

Please check the
regions in which the
counties to be served
are located

OR

Provide a service
radius in miles from
your location below:

- Capital Region (Albany, Schenectady, Rensselaer, Columbia, Green, Warren, Washington, Hamilton, Saratoga County)
Western (Erie, Niagara, Chautauqua, Cattaraugus, Allegany County)
North Country (Jefferson, Lewis County)
Adirondack (Clinton, Essex, Franklin County)
Mohawk (Schoharie, Montgomery, Fulton, Herkimer, Oneida County)
NYC (New York, Bronx, Queens, Kings, Richmond County)
Finger Lakes (Orleans, Genesee, Wyoming, Monroe, Livingston, Wayne, Ontario, Seneca, Yates, Delaware County)
Southern Tier (Steuben, Schuyler, Tompkins, Chemung, Tioga, Broome, Chenango, and Otsego County)
Mid-Hudson (Sullivan, Orange, Rockland, Ulster, Westchester, Putnam, Dutchess County)
Central (Oswego, Cayuga, Onondaga, Cortland, Oneida, Madison County)

OR

I wish to serve a radius of ___ miles from the street address listed above.

Through the New York Residential Existing Homes Program, New York State Energy Research and Development Authority (NYSERDA) offers EmPower+ New York (hereinafter referred to as "the Program") to deliver energy efficiency and energy-use education to income-eligible households in New York State.

The Program provides cost-effective direct install and home performance measures. Direct install measures include, but are not limited to, replacement of inefficient lighting with energy efficient lighting, replacement of refrigerators and freezers with more efficient appliances. Home performance measures include, but are not limited to, blower-door assisted air sealing, attic, sidewall and basement insulation, the repair of heating system and domestic hot water equipment, or replacement of heating and domestic hot water heating systems with heat pump technology.

For the purposes of this Vendor Agreement (Agreement), the role of the Vendor will be to replace inefficient refrigerators and freezers for low-income families as identified by the Program. As needed NYSERDA may add additional appliances as Program needs change.

This Agreement sets out the terms and conditions under which Vendors may participate in the Program. Under this Agreement, the Vendor agrees to accept referrals of income-eligible Program participants from NYSERDA's Program Implementer. NYSERDA agrees to provide Program and technical support for participating Vendors.

This Agreement supersedes any previous Agreement, is completely voluntary and can be terminated at any time for any reason by NYSERDA. In the event the Vendor wishes to terminate this Agreement, the Vendor must provide 30-days written notice to NYSERDA.

NYSERDA will make available the following services and support to Vendor:

- Referrals of Program participants for installation of energy saving appliances.
- Program support and training on service delivery, reporting, and payment procedures;
- Access to NYSERDA's NY Home Energy Portal to access Program participant project information;
- Prompt payment for eligible services provided under the Program;
- Quality Assurance (QA) and quality control with prompt feedback to the Vendor to ensure adherence to high standards of quality;
- Easy access to the Program Implementer, for prompt response to Program inquiries.

Prospective Vendors should review this document in its entirety before completing and submitting to the Program for review and consideration. Following the submission of an application package, NYSERDA will evaluate the provided documentation prior to considering an Agreement for approval. For both new applicants and returning applicants, key evaluation criteria include, but are not limited to the following:

- (i) Completion and submission of all the required Program paperwork;
- (ii) The Vendor's commitment to fair and ethical business practices as demonstrated through a review of resources including, but not limited to, the Better Business Bureau, NYS Department of Labor, and crowd-sourcing websites

For returning Vendors only, the past performance of the Vendor and/or Vendor staff in the Program or other similar programs which may include but is not limited to:

- (i) Demonstration of the Vendor's ability to properly, and consistently, follow Program policies and procedures, and timely completion of work;
- (ii) Review of historic Vendor's QA scores;
- (ii) Satisfactory and professional interaction with Program staff, Program participants, Program participants, other Program Contractors and Implementation Staff;

- (iii) Satisfactory record of fair and ethical business practices;
- (iv) Responsiveness to Program participant complaints, Implementation Contractor inquiries, and NYSERDA directives

Following the execution of this Agreement, the Vendor agrees to play an active role in the Program by providing high-quality services to Program participants. As a condition of participating in the Program and accessing NYSERDA's benefits, Vendor agrees to the following:

1. Program Requirements

- A. The Vendor, 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 Vendor as the insured, and NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and be reasonably satisfactory to NYSERDA in all other respects. NYSERDA reserves the right to request insurance documentation and copies of Subcontractor agreements for any Subcontractor, and to request the identity of all participating individuals.

The types and amounts of insurance required to be maintained under this Section are as follows:

- (1) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster, and

- (2) Workers' Compensation Employers Liability, and Disability Benefits coverage as required by New York State. The Vendor shall maintain Workers' Compensation covering the obligations of the Vendor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.

If a Vendor 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

- B. Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Vendor shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Vendor 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.
- C. 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 Vendor shall deliver to NYSERDA a certified copy of each policy upon request.
- D. Within five working days, or contemporaneously with the requirements of each insurance policy, the Vendor 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 Vendor, any non-Customer party to this Agreement or NYSERDA.
- E. The Vendor shall have access to a computer with an operating system capable of running any required and necessary Program software. The Vendor shall have an active email account(s) with the ability to receive emails from NYSERDA, the Implementation Contractor(s), and Program participants and check email on a regular basis for Program announcements and other communications. The Vendor shall ensure any email addresses on file with NYSERDA are current and must identify a primary Program point of contact. The Vendor shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary.

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

- F. The Vendor shall adhere to the pricing schedule of appliances and Program-approved models are included as Attachment A. This schedule is subject to change based upon 30-days written notice from the Vendor.
- G. In the event an appliance model is not available, the Vendor may substitute for a like in-stock model without Program approval if the following conditions are met:

- a. Substituted model Must be Same size (cubic Feet) as originally ordered model
- b. Substituted model Must be a White Energy Star Appliance
- c. Cost of Substituted model must be less than \$150 more than the cost of the originally ordered appliance

If the appliance substitution the Vendor is looking to make falls outside of any of the above criteria, they must reach out to support.residential@nyserda.ny.gov for approval

- H. Vendor shall accept referrals from the Program and shall provide services to such referral leads in accordance with the [Program Manual](#) and this Agreement.

Vendor recognizes that referrals received from the Program constitute a benefit from NYSERDA and that the Vendor must make every effort to pursue a referral in a timely fashion. If the Vendor fails to properly respond to a referral within 30 days, the referral may be made to another participating Vendor and future referrals may be affected. Vendor shall invoice for all work within 30 days of completion of the appliance delivery.

- I. The Vendor shall not use information obtained from NYSERDA or NYSERDA's designees in conjunction with its participation in the Program for any purpose other than to implement obligations under this Agreement. The Vendor acknowledges that information obtained from NYSERDA, or NYSERDA's designees, may include certain information concerning the Program or Program participants that is non-public, confidential, or proprietary in nature. The Vendor agrees such information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by the Vendor, its agents, employees, contractors, or professional advisors, other than is expressly required to implement its obligations under this Agreement.
- J. All Participating Contractors and Subcontractors performing work in association with NYSERDA's programs are required to comply with the policies and procedures outlined in the [New York State Information Classification Policy \(NYS-S14-002\)](#) and the [New York State Information Security Controls Standard](#). In general, when corresponding with Program participants, 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 Program participants to redact utility account numbers, social security numbers and bank account numbers if you are requesting documents containing this information. Vendors who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.
- K. Vendor shall maintain any relevant licenses as required by federal, State, county or municipal governments or any other governmental agencies for work in the trades it

undertakes through this Program. Vendor shall produce evidence of current licensing upon request by NYSERDA or its Program Implementer.

- L. Vendor acknowledges that participation in the Program is voluntary, and NYSERDA or its Program Implementer may suspend or terminate Vendor's participation in the Program for any reason, including but not limited to, failure to maintain these standards, poor performance, or inappropriate conduct. In all cases involving termination of Vendor's participation, NYSERDA's written decision is final.
- M. Vendor shall not knowingly employ as a Subcontractor any firm that has been suspended or terminated from this Program or any other NYSERDA program(s) without NYSERDA's prior written permission. An employee of a Subcontractor who has demonstrated unprofessionalism, unethical behavior or has exhibited poor workmanship on one or more past Program projects may be prohibited from working on Program projects.
- N. NYSERDA reserves the right to make changes to the Program upon notice to the Vendor. Programmatic changes announced through Program Announcements will supersede policies and procedures in this Agreement and/or the Program Manual/ Contractor Resource Manual. Such notifications shall be communicated via email and posting of the Program Announcement on the Contractor Support Site at <http://hpwescontractorsupport.com>.
- O. It is the Vendor's responsibility to ensure the appropriate Program contact's email address is on file with NYSERDA in the event of staff additions/losses or responsibility changes. Vendor acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will jeopardize reimbursement for costs incurred under this Program.
- P. Vendor agrees to perform appliance replacement prior to invoicing NYSERDA for the service. In the event that billing discrepancies are identified for work already paid for, NYSERDA reserves the right to withhold comparable amounts of payments owed to the Vendor until the discrepancies are resolved. Billing for appliance installations which have not been completed may result in termination from the Program.
- Q. If Vendor does not comply with Program guidelines on a particular job, NYSERDA may not approve payment for that job.
- R. It is the sole responsibility of the Vendor and its Subcontractors to obtain and comply with the terms of any required permits for installing appliances through the Program. The Vendor shall produce evidence of applicable permits upon request by NYSERDA or its Program Implementer.
- S. A non-participating Subcontractor of a Vendor shall not represent itself as a participant in the Program or as able to offer Program services and benefits, for the purpose of

executing the sale of a non-Program project. Additionally, Vendor shall not permit any Subcontractor to represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementer.

- T. The Vendor 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 Vendor's or its Subcontractor's performance of this Agreement, including, but not limited to, any claim or suit resulting from or related to mildew, fungus, moisture intrusion or mold of every type and nature. The obligations of the Vendor 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.
- U. The Vendor shall not represent that the services it provides, or the materials it uses, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- V. 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 Vendor 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.
- W. Neither Vendor nor its employees shall represent themselves as employees of or certified by the State of New York, NYSERDA or NYSERDA's Program Implementer. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.
- X. The Vendor agrees that the personnel furnished by the Vendor are determined to be "leased employees" within the meaning of Section 414(n) of the Internal Revenue Code, the Vendor 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 Vendor 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.

- Y. The Vendor 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 Vendor and/or a member of a Vendor's staff. Accordingly, the Vendor 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 Vendor'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.
- Z. NYSERDA may at any time, by written Order to the Vendor, require the Vendor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Vendor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Vendor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Vendor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:
- a. by written notice to the Vendor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Vendor, or
 - b. terminate the Work covered by such order

If a Stop Work Order issued under this section is cancelled or the period of the Order or any extension thereof expires, the Vendor shall resume Work. An equitable adjustment shall be made in the delivery schedule and or the fee, if any, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- a. the Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to, the performance of any part of this Agreement, and
- b. the Vendor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

Notwithstanding the provisions of this section, the maximum amount payable by NYSERDA to the Provider shall not be increased or deemed to be increased except by specific written amendment hereto.

2. Project Requirements

- A. All refrigerators and freezers installed as part of this Agreement shall be brand new and meet the requirements identified in Section 5.15 EmPower+ Eligible Measures and Accessories in the [Program Manual](#). All refrigerators and freezers installed must include:
 - a. Controls that are understandable and easy to use
 - b. Levelers on front legs.
 - c. Shelf adjustability.

- B. All refrigerators installed must include:
 - a. Automatic defrost
 - b. Full shelf in freezer
 - c. Separate freezer control

- C. The Vendor shall provide the Program participant with a written warranty of labor and materials. Refrigerators and freezers shall carry a minimum one-year parts and labor warranty from the Vendor, valid from the date the delivery is completed. After one year, the Vendor must honor any valid manufacturer's warrantee for the installed appliance. In the event labor is not covered during this period, the Vendor is expected to charge the Program participant fair market rate for any needed repairs. Damaged or defective items, as determined by the Implementation Contractor, shall be replaced at no cost (including shipping) to the Program. For appliances installed not meeting Program requirements, as identified through a Program participant concern submission or QA inspection, the warranty will be extended one year once the Vendor has remediated all deficiencies to Program/manufacturer's standards.

- D. The Vendor must provide the Program participant with a reasonable time frame for delivery. A courtesy phone call must be made if they are running more than one hour past the scheduled delivery time.

- E. Vendor must maintain satisfactory and professional Program participant interaction, treat Program participants fairly, and shall provide timely completion of work and response to Program participant complaints and NYSERDA directives.

- F. Deliveries must include complete installation into the home, including placement into the designated space and leveling of the new appliance. All refuse related to delivery, including appliance packing materials, must be removed at the time of installation.
- G. If, at the time of the scheduled delivery, there is no one at the residence to receive the delivery, the Vendor can charge a no-show fee not to exceed the cap referenced in Section 5.5 of the [Program Manual](#)-EmPower+ Pricing.
- H. The Vendor must make sure that all units are operational before the delivery crew leaves the home.
- I. Vendor shall provide all Program participants with Vendor contact information, and all included manufacturer's documentation that came with the appliance, which at a minimum shall include the manual(s).
- J. Vendor will provide a confirmation of appliance delivery to the customer identifying the make and model of the appliance installed, signed by the customer. The Vendor may upload a copy of the confirmation in the Program workflow platform. Alternatively, the Vendor may retain a copy of the confirmation of appliance delivery for six years from the date of delivery and provide a copy to NYSERDA upon request as part of Quality Assurance procedures.
- K. At the time of payment request, the Vendor will record all required data including make and model of the appliance installed and attest to delivery confirmation in the Program workflow software. It is expressly understood that NYSERDA and its Program Implementor will approve payment based on the attested delivery confirmation provided by Vendor.
- L. Following the installation of an appliance, the Vendor must make repairs or provide financial compensation within seven working days for any damage done to either the appliance or the home during the installation.
- M. Vendor shall remove old refrigerators and freezers from Program participant's home at the time of installation. The Vendor is responsible to legally dispose of all replaced refrigerators and freezers. All refrigerators and freezers must be dismantled to prevent reuse and parts must not be sold or distributed for reuse. Refrigerants, including but not limited to chlorofluorocarbons (CFC's), hydro chlorofluorocarbons (HCFC's), or 134A (HFC's), must be removed in accordance with Section 608 of the Clean Air Act and 40 CFR Part 82. Any capacitors or ballasts that may contain Polychlorinated biphenyls (PCB's) must be removed and disposed in a manner consistent with federal, state, and local laws. All capacitors must be physically removed and examined. Any capacitor that clearly says "NO PCBS" can be disposed of in a manner consistent with generally accepted industry practices. If the words, "NO PCBS" do not appear on the label, the capacitor contains PCBs and must be incinerated by an EPA approved incineration site or

put in a landfill that is permitted to legally handle PCBs. All refrigerators and freezers must be sent to a shredding or baling facility for final destruction and recycling of materials.

- N. If, during the warranty period, the unit fails three times for a problem originating from the manufacturer and/or repair, the Vendor must replace the appliance at no cost to the Program participant.
- O. The Vendor must notify the Program Implementer immediately once they have been made aware of a manufacturing defect identified during the warranty period and assist in ensuring that the manufacturer proactively fixes the defect before the unit fails.
- P. If a refrigerator or freezer fails due to manufacturing defects during the warranty period, the Vendor must reimburse the Program participant for the cost of food spoilage, up to \$300, due to the appliance failure.
- Q. If the Program participant has to wait more than three days for a warranty repair part for an appliance provided by the Vendor and the appliance is inoperative, the Vendor must provide a loaner to the family.
- R. If Vendor becomes involved in a dispute with a Program participant over business practices, Vendor shall work with the Program Implementer to resolve the dispute amicably.
- S. NYSERDA, its Program Implementer or QA Contractor may conduct random field inspections of work that has been performed through the Program as part of this Agreement. Vendor recognizes NYSERDA's commitment to inspect at least 10% of all jobs performed by the Vendor under the Program.
- T. Vendor, upon request of NYSERDA, Program Implementer, or QA Contractor, and at no additional cost to the Program participant, shall make reasonable repairs or corrections as required. This provision survives termination of the Agreement.
- U. Vendor shall maintain effective procedures for QA, for resolution of Program participant complaints or disputes, and for response to Program participant emergencies. Vendor agrees to make these procedures available to NYSERDA or its Program Implementer for review and approval upon request.

3 Required Disclosures

- A. Using the space below, Vendor shall disclose whether it (any owner, member, principal, shareholder, officer, or employee) has been suspended or terminated from any NYSERDA

program(s) during the past five (5) years. In addition, please provide a written explanation of the circumstances leading to such suspension or termination by attaching additional pages if necessary.

Name

Program

B. Vendor shall disclose whether the company is a Minority or Woman Owned Business.

Is your company a Minority, Veteran or Woman Owned Business? ____ Yes ____ No

APPLICANT CERTIFICATION

I certify, under the penalties of law that the statements made in this Agreement, and in supporting documentation provided along with this Agreement, have been examined by me and are true and complete and that I have the authority to sign on behalf of Vendor. I understand that by signing this Agreement, I consent to any other inquiry to verify or confirm the information I have given. I hereby authorize any reference identified or provided to NYSERDA by Vendor to release to NYSERDA any information pertaining to past or present relevant work. I hereby release from all liability or damage, NYSERDA and those persons, agencies or organizations who may furnish such information.

Signed:

Name of Vendor Company

Signature

Date

Printed Name

Title