

**Attachment B
Green Jobs/Green New York
Small Business / Not-for-Profit
Participation Loan Agreement**

Loan Originator: _____
(Financial Institution, including all subsidiaries)

Contact Person: _____
Bank Officer who will be primary point of contact for Participation Loan Product

Mailing Address: _____

Federal Tax ID #: _____

Telephone Number: _____ **Fax Number:** _____ **E-mail:** _____

Whereas, the Green Jobs / Green New York Act of 2009 authorized NYSERDA to offer loans to support energy efficiency/renewable energy retrofits in Small Business (SB) and Not-for-Profit (NFP) facilities. NYSERDA developed a loan product, the Participation Loan, in which NYSERDA will partner with Lenders to provide funds towards loans expected to be made between lenders and SB / NFP Applicants to finance eligible energy efficiency/renewable energy improvements per NYSERDA-approved Requests for Financing. Such funds will equal 50% of an eligible loan amount, as approved by NYSERDA, up to a maximum of \$50,000 per loan. NYSERDA's funds will be provided at its interest rate as found in the Request for Financing Package, which may change from time to time.

Now, therefore, this Participation Loan Agreement (the "Agreement"), by and between the New York State Energy Research and Development Authority ("NYSERDA") and _____ (the "Lender") with respect to partnering to provide GJGNY Participation Loans for Small Businesses and Not-for-Profits to finance eligible energy efficiency/renewable energy improvements as described in the GJGNY Small Business / Not-for-Profit Program (nyserdera.ny.gov/gjgny-small-business-nonprofit-financing), is made subject to the terms of NYSERDA Program Opportunity Notice (PON) 2293 and the terms and conditions attached as Exhibit B.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed, intending to be legally bound hereby, the day and date set forth below.

<p>LOAN ORIGINATOR: _____</p> <p>BY: _____</p> <p>PRINT NAME: _____</p> <p>TITLE: _____</p> <p>DATE: _____</p>	<p style="text-align: center;">New York State Energy Research and Development Authority</p> <p>BY: _____</p> <p>PRINT NAME: Jeffrey J. Pitkin</p> <p>TITLE: Treasurer</p> <p>DATE: _____</p>
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Email or FAX **two** completed Agreements to NYSERDA: gignysbnfp@nyserdera.org or 518-862-1091

*****REQUIRED** Please provide the following information for use on our website, nyserdera.ny.gov/gjgny-small-business-nonprofit-financing

Commercial Contact:	Address:
Phone: _____ Fax: _____	E-mail: _____
Lending Region (please list all New York counties served):	

Exhibit A - Participation Loan Agreement – Terms and Conditions

1. Definitions

- a) **Approved Energy Efficiency Measures Worksheet:** Worksheet included in the Energy Efficiency Request for Financing Package, completed by the Applicant, which identifies the eligible energy efficiency improvements, associated costs to implement, estimated annual energy cost savings, simple payback, and total Eligible Loan Amount.
- b) **Eligible Applicant (or Applicant):** 1) A person or entity that owns a Non-Residential Structure; OR 2) a person or entity that leases or manages all or part of a Non-Residential Structure, AND is authorized to make improvements to such structure, AND has obtained a release from the owner of the Non-Residential Structure, as evidenced by owner's signature in the Request for Financing Form, to seek Program financing. Eligibility of not-for-profit entities that own a residential (1-4 family) structure will be determined at NYSERDA's discretion.
- c) **Lender:** A community development financial institution, a credit union insured by the National Credit Union Association, or any commercial bank, trust company, savings bank, savings and loan association, or mortgage Lender authorized by Federal or State law to operate in New York State, or a not-for-profit investment fund.
- d) **Loan Servicer:** NYSERDA's third party loan servicer, currently Concord Servicing Corporation, retained to monitor Participation Loan closing documents and receive NYSERDA's principal payments from Lenders on behalf of NYSERDA. NYSERDA shall notify Lender in writing not less than 60 days in advance of appointment of any change in the Master Loan Servicer during the term of this Agreement.
- e) **Non-Residential Structure:** A building that is used or occupied by a Small Business or a Not-for-Profit corporation.
- f) **Not-for-profit:** A corporation resident in New York State formed exclusively for a purpose or purposes, not for profit or financial gain, and where no part of the assets, income or profit is distributable to or benefits its members, directors, or officers, except as allowed by statute.
- g) **Participation Loan:** A secured or unsecured consumer or business loan with a fixed term no greater than 10 years and a full amortization (i.e., 10 year term, 10 year amortization). The interest rate charged by the Lender may be fixed or variable. Lines of credit are not eligible for the Program.
- h) **Program Requirements:** The NYSERDA-approved terms in the Request for Financing Package and the Terms and Conditions in this Agreement in their entirety.
- i) **Project Participation Agreement:** NYSERDA-provided form completed by the Lender after the terms of the Participation Loan, based on a NYSERDA-Approved Request for Financing Package, have been determined for an Applicant. The Form is available on the NYSERDA website (nyserda.ny.gov/gjgny-small-business-nonprofit-financing), and must be submitted for approval prior to closing on a Participation Loan.
- j) **Request for Financing Package:** Project application package used as the basis for the Participation Loan, approved by NYSERDA, and provided by the Applicant to the Lender. For Energy Efficiency projects, this contains: 1) Request for Financing Form; 2) Approved Energy Efficiency Measures Worksheet; 3) Contractor's cost proposal for measures to be implemented; 4) Copy of technical specification sheets for measures to be implemented; and 5) Copy of an approved qualified energy audit. For renewable energy projects the Request for Financing Package includes 1) the project eligibility letter; 2) proforma worksheet; and 3) incentive award.
- k) **Small Business:** A business that is resident in New York State, independently owned and operated, not dominant in its field, and has 100 or fewer employees.
- l) **Small Business/Not-for-Profit Template:** A template form used to electronically transmit information on closed Participation Loans to the Master Loan Servicer. The form and transmittal instructions are available on the NYSERDA website (nyserda.ny.gov/gjgny-small-business-nonprofit-financing).

2. Lender Loan Review and Approval Process

The Applicant shall provide and the Lender shall review the Applicant's NYSERDA-approved Request for Financing Package and financial and other information, and determine Applicant's eligibility to receive a Participation Loan based on the following:

- a) **Underwriting Criteria:** Credit-worthiness determinations will be made by the Lender in accordance with Lender's standard underwriting practices.

b) **Eligible Loan Amount:** The total energy efficiency or renewable energy project cost, less estimates of any available NYSEERDA or utility incentives, as approved by NYSEERDA in the Request for Financing Package. The amount of financing an Applicant can receive from NYSEERDA is limited to 50% of the Eligible Loan Amount, up to a maximum of \$50,000. The total Eligible Loan Amount may exceed \$100,000.

- i. Lenders may combine non-energy project funding for their portion of the Participation Loan, as requested by the Applicant, with the Eligible Loan Amount. However, NYSEERDA's portion of the Participation Loan will remain bound by the cost of the energy efficiency or renewable energy project identified in the Request for Financing Package.
- ii. NYSEERDA requires lenders to obtain prior approval before closing on a Participation Loan in which the NYSEERDA Participation amount varies by more than 10%.

c) **NYSEERDA Participation:** The amount of financing an Applicant will receive from NYSEERDA, limited to 50% of the Eligible Loan Amount, up to a maximum of \$50,000, at an interest rate disclosed in the Request for Financing Package.

d) **Interest Rate:** The interest rate charged by the Lender on the remaining portion of the Eligible Loan Amount, resulting in a blended, below-market interest rate being charged to the Applicant.

e) **Loan Term:** A fixed term no greater than 10 years with a full amortization (e.g., 7 year term, 7 year amortization).

f) **Request for Financing Package:** An Applicant seeking GJGNY financing must provide the Lender a copy of the Request for Financing Package, approved by NYSEERDA, and signed by the Applicant.

g) **Denials:** Applicants who are unable to qualify for a Participation Loan shall receive a denial letter from the Lender in accordance with Lender's standard lending procedures. Lender shall transmit a copy of the denial letter to NYSEERDA.

h) **Project Participation Agreement:** Once the Lender has determined the terms of the Participation Loan for the Applicant, the Lender shall complete and sign the Project Participation Agreement, available on the NYSEERDA website (nyserda.ny.gov/gjgny-small-business-nonprofit-financing), indicating the final terms of the Participation Loan, and submit it and the unexecuted Participation Loan documents to the Master Loan Servicer for review on behalf of NYSEERDA. **Lenders shall not close on Participation Loans prior to receipt of confirmation from the Loan Servicer that the Loan comports with the terms and conditions of this Agreement.**

3. NYSEERDA Approval Process – Pre-Closing Review

The Participation Loan documents will undergo a pre-closing review by the Loan Servicer on behalf of NYSEERDA.

- a. Before closing on the Participation Loan, the Lender will electronically transmit to NYSEERDA's Loan Servicer the completed and signed Project Participation Agreement and a copy of the Applicant's Request for Financing Package.
- b. NYSEERDA approval is required if the pre-closing NYSEERDA Participation amount varies by more than 10% from the amount identified in the Applicant's Request for Financing Package.
- c. The Loan Servicer will confirm that the unexecuted Participation Loan documents comport with the Project Participation Agreement, NYSEERDA Program Requirements and the Applicant's NYSEERDA-Approved Request for Financing Package. The Loan Servicer will complete its review and notify Lender and copy NYSEERDA within (3) business days of receipt of the unexecuted Participation Loan documents from the Lender.
- d. The Loan Servicer will notify the Lender should any deficiencies be found. It is the responsibility of the Lender to correct any identified deficiencies.
- e. Upon receipt of confirmation from the Master Loan Servicer, the Lender shall commence closing the Participation Loan.

4. Reporting Closed Participation Loans to the Loan Servicer

After closing on the Participation Loan and disbursing funds to the borrower, the Lender shall electronically transmit the executed Participation Loan closing documents to the Loan Servicer for verification, per the transmittal instructions found on the NYSEERDA website (nyserda.ny.gov/gjgny-small-business-nonprofit-financing).

5. Post-Closing Review by Loan Servicer

- a. Pursuant to its agreement with NYSEDA, the Loan Servicer will confirm the executed Participation Loan documents have not been modified since its pre-closing review. Any deficiencies identified by the Loan Servicer must be addressed and rectified by the Lender. All discrepancies must be resolved before NYSEDA reimbursement can be authorized. If the executed Participation Loan documents are deemed acceptable, the Loan Servicer will submit invoicing information to NYSEDA to reimburse the Lender for the NYSEDA Participation amount.
- b. The Loan Servicer or NYSEDA shall notify Lender promptly if any data is missing or needed in order to release NYSEDA's Participation amount to the Lender or if the Participation Loan is rejected for failure to comply with the terms and conditions of the Project Participation Agreement.

6. Reimbursement and Payment of Lender

- a) The Loan Servicer shall complete its review within two (2) business days of receipt from Lender of the executed Participation Loan closing documents. Upon approval and confirmation by the Loan Servicer, NYSEDA's Participation amount shall be transferred from NYSEDA to Lender, based upon the payment instructions provided by the Lender in Exhibit B, within seven (7) business days of confirmation by NYSEDA's Loan Servicer.
- b) NYSEDA shall pay the Lender via wire transfer the sum of all Participation Loans approved.

7. Loan Payments and Reporting to the Loan Servicer

- a) Lender shall remit payments to NYSEDA, through its Loan Servicer, and payments shall be due no later than 15 days after the date due from borrower. The Loan Servicer shall provide a statement to the Lender in advance of each scheduled payment due date and provide instructions for such payment.
- b) Lender shall repay NYSEDA's pro rata share of the Participation Loan principal in consecutive equal monthly installments, as identified in the Project Participation Agreement, in each month during which a borrower has made a scheduled payment under the Participation Loan, but shall not be obligated to make payment to NYSEDA if no payment is received from a borrower. In the event that the borrower prepays any amount due under the Participation Loan agreement, the prepayment amount shall be applied first to accrued interest, then, on a pro rata basis determined by the percentage ownership in the approved loan, to the outstanding principal balances of both the NYSEDA and Lender portions of the Participation Loan. Notwithstanding any other provisions of this agreement, if a borrower makes a scheduled payment that is less than the amount due, the payment amount shall be applied, on a pro rata basis determined by the percentage ownership in the approved Participation Loan, to the outstanding balances of both NYSEDA and Lender portions of a loan.

8. Lender Representations and Warrants:

Lender represents and warrants to NYSEDA as to each Participation Loan entered into under this Agreement, as of the date of NYSEDA's reimbursement of such Participation Loan, that:

- a) The Lender recognizes that there is a fixed amount of funding available from NYSEDA and the revolving loan fund as noted in NYSEDA PON 2293. NYSEDA will notify participating Lenders if the revolving loan fund balance falls below 95% of current funding levels such that additional loan applications and approvals would be impacted.
- b) Lender will exercise the same degree of care and discretion in continuing to service the Participation Loan and collecting the payments thereunder as Lender would ordinarily take in the payments thereunder solely for its own account. The Participation Loan is considered in default if any scheduled payment is past due 90 days or more. In the event such default occurs, Lender and NYSEDA shall consult with each other as to a mutually agreed upon course of action to pursue in order to collect the amounts then owed under the Participation Loan. All costs of collecting shall be borne by Lender. Any recovery on the Participation Loan will go first to repay Lender its collection costs and accrued interest due, with the balance applied proportionately between the principal balances owed Lender and NYSEDA.
- c) Unless NYSEDA has expressly consented to such action, NYSEDA shall not be liable to any third party as a result of any action of Lender, which is subsequently found to be illegal or negligent, and shall have no obligation to reimburse any portion of any judgment, order or decree entered against Lender and Lender agrees to indemnify the participant for any judgment, order or decree entered against NYSEDA as a result of any action of Lender.
- d) Lender makes no representations or warranties, whether expressed or implied, to NYSEDA as to the collectability of a Participation Loan, the continued solvency of the Borrower, or as to the existence,

sufficiency or value of the collateral securing a Participation Loan, if applicable; or to NYSERDA as to the validity and enforceability of the documentation for a Participation Loan, other than that to the extent required under applicable law, the deed of trust and/or security agreements under a Participation Loan will be validly perfected or recorded and constitute a first lien or security interest on the collateral subject to such agreements. If such lien or security interest is not a first lien or security interest, such fact must be disclosed to NYSERDA and NYSERDA must consent to the making of the Participation Loan on collateral in which the Lender and NYSERDA do not have a first lien or security interest. The parties hereto further agree that NYSERDA shall have no interest in any other property of the Borrower or of any co-maker, guarantor, endorser, taken as security for any other and/or additional loan or loans made by Lender, or acquired by Lender or in any property now or hereafter in the possession or control of Lender, which other property may indirectly secure repayment of the Participation Loan by reason of "cross-collateralization"; except that if any such other property or the proceeds thereof is applied to the reduction of a Participation Loan, then NYSERDA shall be entitled to share in such an application of payment or payments as provided therein.

e) Upon reasonable notice, Lender will make available to NYSERDA, during its ordinary business hours, a Borrower's loan file, as it relates to a Participation Loan, for NYSERDA's review.

f) Lender will not, without NYSERDA's written consent: (i) renew, extend or consent to a revision in the provisions of a Participation Loan evidencing the shared obligation or security document; (ii) make or consent to any release, subordination, substitution or exchange of security for a shared obligation (provided that if a security is collateral in the form of accounts or inventory, then when no portion of a shared obligation is overdue or where NYSERDA has not otherwise instructed Lender in writing, Lender may permit a Borrower to collect accounts, sell inventory and use the proceeds thereof, all in the ordinary course of a Borrower's business); (iii) sell, assign or transfer any of said security, waive any claim against a Borrower, the guarantor, or a standby or substituted creditor in connection with a shared obligation; (iv) cause or allow the principal of a shared obligation to be increased; (v) negotiate, sign, discount, endorse or guarantee any Participation Loan or obligation of the Borrower or issue any letter of credit as to a Borrower. Such written consent from NYSERDA shall not be unreasonably withheld.

g) Lender will notify NYSERDA, in writing, if a Participation Loan evidencing a shared obligation is sold or if its servicing has been subcontracted, and will provide NYSERDA with the name, mailing address and the telephone number of the buyer or servicer within fifteen (15) calendar days following said sale or agreement to service.

9. General Terms:

If the Lender fails to comply with the terms and conditions of this Participation Agreement, NYSERDA reserves the right to revoke Lender's right to provide the GJGNY Small Business / Not-for-Profit Participation Loan Product.

10. Termination

This Agreement may be terminated by NYSERDA at any time during the term of this Agreement, with or without cause, upon ten days prior written notice.

Exhibit B - Participation Loan Agreement – Electronic Funds Bank Transfer Information and Authorization

The NYSERDA Participation Amount is paid via electronic funds transfer to Lender upon confirmation of closing of the Participation Loan. Complete the following payment instructions to authorize payment:

EFT Bank Information and Authorization Form

PLEASE COMPLETE THE ITEMS BELOW

_____ - _____
Federal Employer Identification Number (FEIN)

Payee Name & Address: (Please Type or Print)

Payee Name

Address Line 1

Address Line 2

City State Zip Code

Financial Institution _____

ROUTING NUMBER _____ ACCOUNT NO. _____

Lender certifies that this agreement authorizes NYSERDA to deposit funds into the designated bank account through an electronic fund transfer. In the event that an erroneous electronic payment is sent, NYSERDA reserves the right to 'reverse' the electronic payment. In the event that 'reversal' cannot be implemented NYSERDA will utilize any other lawful means to retrieve payments to which the payee was not entitled.

Authorized Official Signature and Title: _____

Date: _____

Contact Name: _____

e-mail address: _____

Phone Number: (_____) _____ - _____

Remittance Fax Number for Notification: (_____) _____ - _____