2008/09 Home Performance with ENERGY STAR®
Contractor Partnership Agreement:
(Funded by New York Energy $mart^{sm})

The New York State Energy Research and Development Authority (NYSERDA) is offering Home Performance with ENERGY STAR (hereinafter referred to as the Program) to improve the energy performance, durability, healthiness and safety of existing one-to-four family residential housing in the **New York Energy $mart^{SM}** program territory[1]. The objectives of the Program are to enhance the delivery of building performance services that use state-of-the-art diagnostic tools and the principles of building science to reduce energy consumption cost-effectively, while simultaneously addressing health issues pertaining to indoor air pollutants (focusing on carbon monoxide and other pollutants associated with combustion appliances), ventilation, and moisture control. In cooperation with the Building Performance Institute (BPI), participating Program lenders, and the United States Environmental Protection Agency, NYSERDA is offering a comprehensive assistance package to both consumers and participating contractors designed to increase awareness of, and demand for, building performance contracting while simultaneously building an infrastructure of trained and certified technicians and accredited contractors to deliver such services.

This Agreement sets out the terms and conditions under which contractors shall participate in the Program. Under this Agreement, Participating Contractors contract with property owners to provide building performance services that comply with Program requirements and standards. The Program, in return, agrees to provide technical and marketing support for Participating Contractors.

This Agreement is voluntary and can be terminated at any time for any reason by either NYSERDA or the Participating Contractor.

Services that the Program will make available to Participating Contractors while in good standing with the Program include:

- providing financial support for Program training, BPI certification and accreditation (required to ensure quality and consistency of services);
- assistance in procuring diagnostic equipment;
- the opportunity to respond to leads generated from a large-scale public awareness campaign;
- exclusive access to the consumer financing options offered through the Program, (i.e., ENERGY STAR Financing, **New York Energy $mart^{SM}** Loan Fund, 10% Homeowner

[1] All **New York Energy $mart^{SM}** programs are funded by a System Benefits Charge (SBC) paid by electric distribution customers of Central Hudson Gas & Electric, Consolidated Edison, New York State Electric and Gas, National Grid, Orange & Rockland, and Rochester Gas and Electric. NYSERDA, a public benefit corporation established by law in 1975, administers SBC funds and programs under an Agreement with the Public Service Commission.

Financing Incentive and, for income-qualified homeowners, Assisted Home Performance work scope subsidy;
- project incentives that reward productivity, and encourage partnerships with other Participating Contractors to provide comprehensive building performance services across trades;
- the use of Program required software. The Program required software serves several functions, including: recording field audit results, calculating energy savings, analyzing the cost effectiveness of work scopes and producing Comprehensive Home Assessment reports. Participating Contractors are required to sign, and abide by, the terms of the required software user's agreement;
- use of approved NYSERDA marketing materials, which can be customized to include the Participating Contractor's logo and other company information;
- opportunity to participate in other NYSERDA pilot initiatives (i.e., programs, studies); and
- a Co-Operative (co-op) advertising Incentive to assist in Participating Contractor's marketing efforts.

By executing this Agreement, the Participating Contractor agrees to play an active role in the New York Home Performance with ENERGY STAR Program by providing high-quality building performance services to Program customers. As a condition of participating in the Program and accessing Program benefits, the Participating Contractor must agree to the following:

1. Participating Contractor has the capability to conduct business successfully

Submission of the initial Partnership Agreement shall include:
- documentation of the Contractor's business structure (i.e. DBA, corporation, partnership);
- signing individual's title in the company or organization, and affirmation that he or she has the authority to bind the company or organization;
- documentation that they have owned, operated or managed a successful contracting or home improvement business for a period of not less than three years;
- documentation verifying at least two (2) of the following:
    1. That the principals in the business have a satisfactory individual credit score with no outstanding liens, judgments or a bankruptcy within the last seven (7) years;
    2. That the principals have a net worth of at least $50,000, verified by an audited financial statement or the last two year's tax returns;
    3. A satisfactory Dun and Bradstreet Rating for the contracting firm applying for participation;
    4. A satisfactory banking reference for the contracting firm applying for participation;
    5. A minimum of three (3) trade references for the contracting firm applying for participation.

Contractors unable to meet these requirements must submit, in writing, a Request for Waiver to NYSERDA. The Request for Waiver must provide a detailed and reasonable explanation of the reasons why the Contractor is unable to comply with the terms of the requirement, as well as alternative documentation that supports the claim that the contractor has the capability to operate a contracting or home improvement business successfully. NYSERDA reserves the right to reject any Request for Waivers.

- Participating Contractor shall disclose prior participation in NYSERDA's programs. Participating Contractor must divulge whether any individual(s) including owners, principals, shareholders, associates, employees, and sub contractors affiliated with the Participating Contractor have previously participated in, or are currently participating in, any

of NYSERDA's programs including Home Performance with ENERGY STAR and Assisted Home Performance with ENERGY STAR. If so, list any and all individuals on the Signature Page of this document. This is an ongoing requirement. As such, the Participating Contractor shall notify NYSERDA immediately of any changes or updates to this information.

2. **Participating Contractor shall properly respond to customer inquiries to and leads referred by the Program**
   - Participating Contractor shall accept referrals from the Program and shall provide services to these referral leads in accordance with the Program guidelines and this Partnership Agreement; and
   - Participating Contractor shall respond to customer inquiries in a timely manner and ensure prompt and accurate reporting of project completions to the Program.

3. **Participating Contractor shall remain in compliance with the following Program requirements:**
   - Participating Contractors are expected to be ambassadors and marketers for the Program, any conduct that runs contrary to this shall be the basis for disciplinary action;
   - Participating Contractor shall meet the requirements for BPI accreditation.
   - Participating Contractor shall ensure that personnel conducting Comprehensive Home Assessments and all BPI-required test-in tasks are BPI Certified to at least the Building Analyst level;
   - Participating Contractor shall ensure that BPI-certified personnel with the appropriate certification for the work being performed supervise all jobs performed under the Program, whether performed by the Participating Contractor's own employees, or by a subcontractor;
   - Participating Contractors are required to employ adequate and properly BPI-certified staff that is dedicated exclusively to each **New York Energy $mart Market Region** in which they provide services;
   - For each **New York Energy $mart Market Region** in which they provide services, the Participating Contractors are required to provide the Program with a the names and BPI certifications for staff assigned to each market region;
   - Participating Contractor is strongly encouraged to employ the services of other BPI-Accredited companies when subcontractor work is required;
   - Participating Contractor shall ensure that technicians receive, at a minimum, training that is in compliance with BPI's continuing education credits requirement;
   - Participating Contractors must, per BPI accreditation requirements, have at least one staff member who is certified at the BPI Certified Professional level in the areas for which they perform and submit work (i.e., envelope, heating, cooling);
   - Participating contractors shall notify BPI immediately should they be in non-compliance with any BPI Accreditation requirements;
   - Participating Contractor can only submit work to the Program under the BPI accredited company or organization name;
   - Participating Contractor is responsible for the work performed by its subcontractor(s);
   - Participating Contractor employing the services of subcontractors shall provide the Program a copy of the fully executed subcontracts and list sub contractors clearly on the contract;
   - A Participating Contractor employing the services of subcontractors shall ensure such subcontractors adhere to Program policies and standards, all subcontractor(s) utilized shall be listed on project documents submitted to the Program;

- Participating Contractor shall, upon request, provide information related to all subcontractors providing program services, fully describing the nature of these relationships, ownership data, and other information requested by NYSERDA;
- Participating Contractor shall have a computer, with an operating system capable of running the necessary program software, and to be able to receive emails from NYSERDA and its program affiliates;
- Participating Contractor shall acquire and use the Program-mandated modeling software for building analysis and energy savings estimation. The details for operation of this software and the software licensing agreement are contained in the software information package;
- Participating Contractor shall actively pursue training in the use of program-mandated software; and
- Participating Contractor can only submit work in the Program for which they have BPI Professional certification (i.e., a Contractor with Envelope Professional certification only, cannot submit heating or cooling system work through the Program).

4. Participating Contractors shall be active in the Program

- Participating Contractor shall, during their second and each succeeding year of participation (determined by date of activation), report to the Program a minimum of twenty four (24) completed jobs per year, or completed jobs totaling at least $180,000 per year, in order to qualify for Program incentives, including: BPI certification and accreditation reimbursement and co-op advertising;
- Participating Contractor shall, for every Comprehensive Home Assessment (CHA) for which a fee is charged, or which results in a Program project, provide the homeowner with the entire CHA report and a detailed work scope proposal that includes measures and pricing for improving the energy efficiency, comfort, and safety of the home. The CHA report should include all energy efficiency, comfort, health and safety opportunities (per Program guidelines and protocols) that exist in the home regardless of whether the Contractor offers these services (i.e. a Contractor with Heating certification needs to identify Envelope issues in the CHA report);
- Participating Contractor shall ensure that the Program financing options are utilized only for the installation of Eligible Measures and Accessories.

5. Business Practices

- Participating Contractor shall treat all clients fairly and deliver promised services in a timely, competent, and responsible manner;
- Contractor shall properly represent the relationship of the Contractor and their subcontractors to the State of New York, NYSERDA, and NYSERDA's Program Implementer, this relationship being that the Contractor is an independent contractor, accredited by the BPI and a voluntary participant in NYSERDA's Home Performance with ENERGY STAR Program. Participating Contractors shall **not** represent themselves as working for, approved by, or certified by, the State of New York, NYSERDA or NYSERDA's Program Implementer;
- Participating Contractor and their subcontractors shall properly and fully present features and benefits of NYSERDA's Program to the customer so that the customer may make an informed decision, and shall refrain from unfair or inaccurate characterizations of NYSERDA, the Program, the Program Implementer, or BPI;
- The Participating Contractor shall submit required Program documents for the purpose of processing customer incentives within 30 days of project completion or forfeit all contractor incentives;

- Participating Contractor shall maintain any required federal, state, county or municipal government licenses or licenses required for work performed in the Program;
- Participating Contractor shall provide and submit to the Program contracts in full compliance with Article 36-A "HOME IMPROVEMENT CONTRACT LAW" of the General Business Law;
- Participating Contractor shall maintain general liability insurance coverage of at least $1million and produce evidence of current coverage upon request by NYSERDA or its Program Implementer;
- Participating Contractor shall provide all customers with required customer and Program information materials;
- Participating Contractor shall provide the customer a written warranty of labor and materials for a minimum of one (1) year from the date the service is performed. Equipment installed shall carry the manufacturer's warranty plus optional extended warranty coverage, if applicable;
- If a Participating Contractor, or their subcontractors, 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 customer complaint resolution process on file with BPI. NYSERDA and its Program Implementer have no responsibility to provide dispute resolution assistance. However, regardless of the nature of, or parties involved in, the dispute and any resolution, the Participating Contractor shall hold NYSERDA and its Program Implementer harmless from any suit arising from work in the program;
- Participating Contractor shall allow random Quality Assurance field inspections, by NYSERDA or its designee, of work that has been performed. Should any non-compliance issues be discovered as a result of these inspections, the Program will notify the Participating Contractor. Within 30 days of the notification, and at no additional cost to the customer, the Participating Contractor shall make any required health and safety repairs or corrections and/or reasonable repairs needed to bring such work up to Program standards. In the case of projects that receive an "F3" score, as determined by the Program QA Contractor, all serious health and safety non-compliance issues associated with the project must be rectified by the Participating Contractor immediately;
- Participating Contractors shall not start work on any submitted project until the project has been formally approved by the Program or its designee. NYSERDA does not guarantee funding of any project until it is formally approved. Any work undertaken without express written approval by NYSERDA or its designee is done at the risk of the homeowner and Contractor;
- Participating Contractor shall not offer customers "vendor financing" unless such financing is regulated by the New York State Banking Department or the appropriate federal regulatory agencies; and
- Any contract submitting for projects that have been partially or fully completed at the time of submittal, or prior to approval, shall not be accepted by the Program. These projects will be ineligible for any Program benefits, (i.e., contractor incentives and consumer financing incentives) and the Participating Contractor shall assume all financial liabilities associated with these projects.

6. Contractor recognizes that participation is a privilege, therefore:

- NYSERDA or its Program Implementer may suspend or terminate Contractor's participation in the Program for any reason, including failure to maintain Program standards. In all cases involving a Contractor's participation status, or denial of Program incentives, NYSERDA's written decision is final. Section 8 of this Agreement contains additional information on Contractor participation status';

- Contractors shall conduct themselves in a professional and respectful manner when interacting with any NYSERDA, Program Implementer, or Program Quality Assurance staff;
- Contractor shall not employ as a subcontractor any firm that has been suspended or terminated from this Program or any other NYSERDA program without NYSERDA's prior written permission;
- NYSERDA reserves the right to make changes to the Program upon notice to the Participating Contractors. Such notification shall be by email and posting on www.GetEnergySmart.org;
- It is expressly understood that NYSERDA and its Program Implementer will not initiate any processing of a job until a fully executed contract between the Participating Contractor and Homeowner, and Customer Information Form, are received;
- Participating Contractor acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will result in a loss of applicable incentives, and possible disciplinary action;
- In determining the ongoing, or future, participation in the Program, the contractor's past performance, quality of workmanship, compliance with relevant licensing requirements and commitment to protecting the public, shall be a key determinant; and
- Participating Contractors who submit fraudulent information or data to the Program risk immediate termination from the Program.

7. Additional Conditions for Assisted Home Performance with ENERGY STAR

In order to make the benefits of Home Performance with ENERGY STAR accessible to households with limited incomes, NYSERDA offers Assisted Home Performance with ENERGY STAR. In Assisted Home Performance with ENERGY STAR, households that meet income guidelines may be eligible for supplemental financial incentives that significantly reduce the project cost to income-eligible household. Participation in Assisted Home Performance with ENERGY STAR is a privilege that is offered to Contractors who are participants in good standing in the Home Performance with ENERGY STAR Program. Participants who submit one or more Assisted Home Performance with ENERGY STAR projects also agree to the following additional conditions:

- Submission to a higher level of job completion inspections for Assisted Home Performance with ENERGY STAR projects;
- Adherence to appropriate pricing for standard measures as defined by NYSERDA's Program Implementer;
- Limitation of any Mechanic's Lien on any property worked on under Assisted Home Performance with ENERGY STAR to the value of such work minus the value of the Assisted Home Performance incentive;
- Work scopes with a savings-to-investment ratio (SIR), utilizing the Program mandated software, of 1.1 or greater; and
- Recognition that any subsidies and incentives paid to the customer and/or contractor in relation to Assisted Home Performance with ENERGY STAR may be reduced or recaptured at the discretion of NYSERDA or its agents, at any time, upon discovery of charges in excess of appropriate pricing standards, as determined by NYSERDA.

8. Contractor Participation Status

Participating Contractors shall be classified in one of the following participation status designations. Each classification shall be subject to limitations, or requirements associated with that designation. NYSERDA reserves the right to modify the definition, limitations, and

requirements of these statuses. NYSERDA retains sole judgment over determining a contractor's progression into and through each status designation.

Provisional – Reserved for all Contractors during their first six months of Program participation. Provisional Contractors are entitled to all applicable Program benefits. Projects completed by Contractors on *Provisional* status will receive enhanced Quality Assurance / Quality Control oversight.

Full – Contractors, not operating under any of the other status designations described here, that have met program goals and provide quality services utilizing industry best practices shall have the status of *Full* participant. Full Participants are entitled to all applicable Program benefits.

Probationary – Contractors who have been found to be in violation of program or ethical standards, or who have been notified by BPI that they are in breach of their BPI accreditation agreement, shall be placed on *Probationary* status. The probationary period will not be less than 30 days. During the probationary period, the Participating Contractors shall:

- Submit to the Program, in writing, an action plan designed to ensure future violations are avoided; and
- Be subjected to higher QA inspection levels.

Upon review of the action plan submitted, probationary period QA results, and prior to the end of the NYSERDA-determined probationary period, NYSERDA will make a determination on the Contractors Participation status going forward. This determination may include: continued probation, *Full* participation status, suspension, or termination. During the probationary period the Participating Contractor will maintain their eligibility for contractor incentives and posting on NYSERDA's www.GetEnergySmart.org website.

Suspended – Applies to Participating Contractors who:

- Were are on *Probationary* status and have either been, unresponsive to, or failed to adequately fulfill, the terms of their probation, or;
- Been placed on probation twice in a twelve month period, or;
- As determined by NYSERDA, have engaged in practices that have put the public, or Program, at risk;
- Have had their accreditation agreement suspended by BPI

During this period the contractor may, if approved by NYSERDA, complete customer projects already submitted to the Program. The contractor, however, forfeit any incentives for projects completed during the suspended period. A Contractor with the status of *Suspended* is prohibited from representing him/herself as a Participating Contractor, enrolling new customers in the Program, or receiving contractor incentives. Suspended Contractors may progress to Probationary Status upon satisfactory completion of the specified remedial activities, or be terminated from Program participation. Nothing in this progression relieves the contractor of the responsibility to fulfill any outstanding obligations to the Program, or Program customers.

Terminated – Applies to contractors who:

- Have been on suspended status for more than 30 days and have been unresponsive to, failed to adequately fulfill, the terms of their suspension, or;
- Have had their accreditation agreement terminated by BPI.

Contractors with this designation are prohibited from participation in the Program. Customers with pending or in-process jobs will be notified of the Contractor's termination and offered such remedies as NYSERDA deems appropriate. NYSERDA shall notify BPI and other organizations responsible for maintaining other certifications the Contractor holds. Further, the officers and owners of a Terminated Contractor are prohibited from being or becoming officers or owners of any other current or subsequent Program contractor. Nothing in this process relieves the contractor of the responsibility to fulfill any remaining obligations to the Program, or Program customers.