

Residential Energy Audit Program Participation Agreement

January 1, 2020 – December 31, 2024

V1.0

Definitions:

Area Median Income (AMI):

The statistical midpoint of household earnings for each county in New York State, or State median income, whichever is higher.

Implementation Contractor:

Organization working under contract with NYSERDA to provide administrative and Program support functions such as data collection, reporting, invoicing and quality assurance.

New York Home Performance Portal (NY HP Portal):

Web-based program management software used by NYSERDA, Implementation contractors, and Participating Auditors to input audit information and upload documents.

Participation Agreement:

This Participation Agreement (“Agreement”) establishes the terms and conditions under which Participating Auditors may participate in the Residential Energy Audit Program (“the Program”) and offer Residential Energy Audits to qualified customers in New York State.

Participating Auditor:

Participating Auditors are companies or organizations that have meet the participation criteria as detailed in this Participation Agreement, the Program Manual and any Program announcements and have been approved by NYSERDA to offer Residential Energy Audits. Participating Contractors in NYSERDA’s Residential Existing Homes Program meet the definition of a Participating Auditor.

Residential Energy Audit:

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

Article I. General Program Information

Section 1.01 Residential Energy Audit Program Overview

The objective of the Residential Energy Audit Program (Program) is to provide homeowners with trusted information about a home's energy performance and to provide them with a roadmap/pathway/report to making sound energy efficiency and clean energy investments into their homes.

The Program will deliver no cost residential energy audits to the owners of one to four-unit residential buildings with income levels above 80% of Area Median Income where the audits are performed using a network of participating, certified, residential energy auditing contractors. Audits for owners of buildings with income levels below 80% of Area Median Income are provided for under NYSERDA's Residential Existing Homes Program.

Participating Auditors must comply with all policies and procedures detailed in this Agreement, the Residential Energy Audit Program Manual and any Program announcements.

Should a Participating Auditor no longer choose to offer residential energy audits under this Agreement, they are required to immediately inform NYSERDA and remove all references to NYSERDA and the Residential Energy Audit Program from their website.

This Agreement is valid through December 31, 2024, or until Program funds are depleted, whichever comes first.

Article II. Participation Requirements

Section 2.01 Participating Auditor and Certified Staff

Each individual conducting audits for a Participating Auditor must maintain at least one of the certifications listed below. By entering into this Agreement, the Participating Auditor authorizes NYSERDA to share and obtain information with and from these certifying bodies for the purpose of verifying certifications the Participating Auditor must have at least one of the certifying organizations and employ staff with one or more of the certifications listed below:

- Association of Energy Engineers (AEE) Certified Energy Auditor
- American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)- Building Energy Assessment Professional
- Building Performance Institute (BPI) Building Analyst
- Building Performance Institute (BPI) Energy Auditor
- Building Performance Institute (BPI) Multifamily Building Analyst
- Home Energy Rater (HERS) Rater
- Investor Confidence Project (ICP) Quality Assurance (QA) Assessor
- Leadership in Energy and Environmental Design (LEED) Rater

The Participating Auditor shall provide NYSERDA written documentation that identifies each individual who will be performing audits and their certifications. As an ongoing requirement, the Participating Auditor shall immediately inform NYSERDA of any change to the list of certified staff that would result in a lack of compliance with these requirements.

Section 2.02 Licensing

It is the sole responsibility of the Participating Auditor to obtain and maintain any required federal, state, county, or municipal government licenses required for conducting residential energy audits and to not perform work for which they are not licensed. The Participating Auditor shall produce evidence of current licensing upon request by NYSERDA. Failure to comply with licensing requirements may result in disciplinary action.

Section 2.03 Permits

It is the sole responsibility of the Participating Auditor to obtain and comply with the terms of any required permits for conducting residential energy audits prior to the start of work. The Participating Auditor shall produce evidence of applicable permits upon request by NYSERDA. Failure to comply with permitting requirements may result in disciplinary action.

Section 2.04 Codes

All Participating Auditors must perform work in compliance with all applicable codes, regulations, laws, and standards in the jurisdiction where conducting work.

Section 2.05 Health and Safety

Each Participating Auditor must have a health and safety plan and maintain a copy of the plan at the work site.

Section 2.06 Insurance

- a) The Participating Auditor, 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 Auditor 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 Auditor shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Participating Auditor shall promptly pay all premiums thereon due. No work shall be performed under this

Agreement without current insurance. NYSEDA 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 NYSEDA hereunder, or if deemed necessary by NYSEDA due to events rendering a review necessary, the Participating Auditor shall deliver to NYSEDA a certified copy of each policy upon request.

Within five working days, or contemporaneously with the requirements of each insurance policy, the Participating Auditor shall notify NYSEDA 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 Auditor, any non-customer party to the applicable Program participant agreement or NYSEDA.

Section 2.07 Professional Liability Insurance

Some Participating Auditors only provide energy auditing services and do not complete installation work. For these business models, the Participating Auditor shall carry professional liability insurance (errors and omissions) with a minimum limit of \$1,000,000.

Section 2.08 Workers' Compensation

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

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

Section 2.09 Participant Issues and Dispute Resolution

NYSEDA 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 Auditor shall hold NYSEDA and its Implementation Contractor(s) harmless from any legal action. Failure to resolve issues in a timely manner may result in disciplinary action. NYSEDA requires the Participating Auditor to maintain a dispute resolution policy on file. If a Participating Auditor becomes involved in a dispute with a customer over business practices, the Participating Auditor shall work to settle the dispute amicably utilizing the Participating Auditor's customer dispute resolution policy.

NYSEDA may request a copy of the Participating Auditor's dispute resolution policy at any time and specifically in the event a Customer notifies NYSEDA of an issue.

Article III. General Application Information

Section 3.01 Application Requirements

The applicant shall provide NYSEDA the information below when submitting the Participation Agreement Application Signature Form, as requested by NYSEDA, 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 NYSEDA

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) Employee roster of certified individuals who will be conducting Residential Energy Audits including proof of certification credentials.
- (c) Detailed description of at least three audits or energy efficiency projects completed in the last six-months including customer address and phone number.
- (d) Certificate of Insurance (See Sections 2.06 and Section 2.07 of this Agreement for details)
- (e) Professional Liability Insurance (if applicable)
- (f) DBA form (if applicable)

It is NYSERDA's sole discretion to request additional information as necessary for determining the eligibility of an applicant in meeting the requirements of this Agreement.

Section 3.02 Evaluation Criteria for Auditor Acceptance

NYSERDA will conduct due diligence in the evaluation of the applicant and 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) NYSERDA 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 review of resources including, but not limited to, the Better Business Bureau, NYS Department of Labor, and consumer reviews.
 - (ii) A minimum of six months experience working in the field of residential, one-to-four family energy efficiency completing audits, ratings, or similar services.
- (b) For applicants who have participated in or who are currently participating in this or other NYSERDA programs, the past performance of the applicant and/or certified individuals 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) 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, participants, other contractors and Implementation Contractors.
 - (v) Satisfactory record of fair and ethical business practices.
 - (vi) Responsiveness to participant complaints, Implementation Contractor inquiries, and NYSERDA directives.

(vii) Has not been suspended or terminated from a program.

Article IV. Agreement Terms

Section 4.01 Program Participation Terms

Upon entering the Agreement, each Participating Auditor shall commit to promoting the Residential Energy Audit offering.

The Participating Auditor acknowledges this Agreement is completely voluntary. NYSERDA may deny an applicant's application or terminate a Participating Auditor for reasons including failure to maintain standards, poor performance, unresponsiveness or inappropriate behavior. In all cases involving a Participating Auditor's participation status, NYSERDA's written decision is final.

As a condition for offering and associated benefits, each applicant and Participating Auditor understands and agrees to the terms and conditions outlined in this Agreement and any 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 Residential Energy Audit Program Changes

NYSERDA reserves the right to make changes to the Residential Energy Audit Program upon notice to the Participating Auditor. Programmatic changes announced through Residential Energy Audit Program Announcements will supersede policies and procedures in this Agreement. Such notifications shall be communicated via email. It is the Participating Auditor'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 V, VII, VIII, IX and Sections 2.06(b) and 2.09 shall survive termination of this Agreement.

Article V. Relations with Residential Energy Audit Program Participants

Section 5.01 Program Participant Inquiries

Participating Auditors shall promptly and appropriately respond to inquiries referred to the Participating Auditors by NYSERDA or NYSERDA's Implementation Contractor.

Section 5.02 Timely Communication

Participating Auditors shall ensure prompt and accurate reporting of all completed Residential Energy Audits. Participating Auditors shall respond to inquiries from Customers, NYSERDA staff, and Implementation Contractors in a prompt, professional, and courteous manner.

Section 5.03 Business Practices and Professionalism

The Participating Auditor is expected to be an ambassador for the Program and any conduct contrary will result in disciplinary action. The Participating Auditor shall comply with all requirements detailed in this Agreement, the Program Manual and any Program Announcements, treat all customers fairly, provide accurate information and deliver promised services in a timely, competent, professional, and reasonable manner.

The Participating Auditor shall not engage in behavior that adversely impacts NYSERDA or other Participating Residential Auditors, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

Section 5.04 Participating Auditor Employee Past Performance

The Participating Auditor shall not engage in unfair or inaccurate representations of NYSERDA, the Residential Energy Audit Program Implementation Contractors, other Participating Residential Auditors or affiliates.

At NYSERDA's discretion, an employee of a Participating Residential Auditor who has demonstrated unprofessionalism or unethical behavior while conducting Residential Energy Audits may be prohibited from working in the Residential Energy Audit Program. This includes any staff member associated with a former Participating Residential Auditor who was under suspension or terminated from the Residential Energy Audit Program or any other NYSERDA program. NYSERDA will notify the Participating Auditor of any individuals prohibited from working on Residential Energy Audit projects and these individuals will continue to be prohibited from working in the Residential Energy Audit Program unless written consent is provided by NYSERDA.

Section 5.05 Proper Use of Program Marketing Material and Logo

Participating Auditors may request permission to use NYSERDA's Attribution Logo following the guidelines listed in the Program Manual. Participating Auditors are not NYSERDA employees, contractors, partners, or representatives. Participating Auditors and their employees must therefore identify themselves as representatives of the Participating Auditor's company, not as representatives of NYSERDA or as NYSERDA employees.

Section 5.06 Computer, Operating System, and Internet Access Minimum Requirements

The Participating Auditor shall have access to a computer with an operating system capable of running any required and necessary software (Microsoft Excel) and accessing the NY HP Portal. The Participating Auditor shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary. The Participating Auditor is prohibited from downloading any type of hacking tools, including, but not limited to, network sniffers, vulnerability scanners, or password cracking tools.

The Participating Auditor shall have an active email account(s) with the ability to receive emails from NYSERDA and Implementation Contractor and check email on a regular basis for Residential Energy Audit Program announcements and other communications. The Participating Auditor shall ensure the email addresses on file with NYSERDA are current and must identify a primary program contact.

Article VI. Residential Energy Audit Requirements

The Participating Auditor acknowledges that failure to follow requirements and procedures stipulated in this Agreement, the Program Manual and any Program announcements will result in disciplinary action as detailed in Section 9 of this Agreement.

Section 6.01 Residential Audit Report Delivery

The Participating Auditor shall provide the customer with a finalized Residential Energy Audit report within seven (7) calendar days of completing the audit site visit. The report shall comply with the Audit procedures documented in this Agreement, the Residential Audit Program Manual and Program announcements. Residential Energy Audits should be uploaded to the NY HP Portal no later than 30-days from the date that the Residential Energy Audit was conducted. Submissions after this deadline will be rejected and ineligible for reimbursement.

Section 6.02 Residential Energy Audit Reimbursement

NYSERDA will reimburse the Participating Auditor the dollar amount detailed in the Program Manual for each instance where an audit for an eligible customer is completed and submitted in accordance with the Residential Energy Audit Program requirements. In instances where an audit is submitted but upon program review does not meet program requirements, NYSERDA reserves the right to deny payment of the audit reimbursement.

Article VII. Quality Assurance and Quality Control

Section 7.01 Quality Assurance and Quality Control

Administrative review of submitted Residential Energy Audits will be completed to ensure program rules are followed and customers are receiving quality energy audits. Field quality control will be completed on an as-needed basis. The Participating Auditor shall not inhibit or discourage customers from participating in the quality assurance process and shall make a good faith effort to facilitate this process.

Article VIII. Participating Auditor Status Designations

Section 8.01 Participation

The Participating Auditor shall be classified as one of the below listed status designations. 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 Auditor's status designation. In all cases, NYSERDA's written decision is final.

(a) Full Status

A Participating Auditor who abides by the conditions of this Agreement and provides quality services using industry best practices shall have the status designation of Full Status Participating Auditor.

(b) Probation

Probationary Status is reserved for Participating Auditors that have failed to meet the requirements of the Program. Probation is prescriptive in nature with both a specific list of results to be achieved and a time frame for achieving those results. The terms of the Probation will be defined in a disciplinary letter from the Program.

(c) Suspension

The terms of the suspension will be defined in a disciplinary letter from the Program. NYSERDA has sole discretion in determining the length of the suspension period and the grounds for suspension.

A Suspended Participating Auditor shall be removed from the NYSERDA website and shall not represent themselves as a Participating Auditor, accept any applications for, nor recruit new participants into, the Program except in the execution of remedial action as approved by NYSERDA.

(d) Terminated

Auditors designated with the 'Terminated' status are prohibited from offering audits to Customers for the remainder of the Participation Agreement term. A Terminated Auditor shall be removed from the NYSERDA website and shall not represent themselves as a Participating Auditor. A Terminated Auditor forfeits its eligibility to provide Residential Energy Audits to its Customers. All references to NYSERDA must be removed from all marketing materials, vehicles, and advertising including vehicle clings and websites, as applicable.

If appropriate, NYSERDA may notify the New York State Attorney General, the New York State Department of Labor, the Better Business Bureau, the Building Performance Institute or other certifying bodies, or others of NYSERDA's findings and decision to terminate the Participating Auditor. In the event a Terminated Auditor'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.

Article IX Standard Terms and Conditions

Section 9.01 Relationship of the Parties

It is understood and agreed that the personnel furnished by the Participating Auditor to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be the Participating Auditor'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 Auditor 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.

Section 9.02 No Benefits

The Participating Auditor agrees that the personnel furnished by the Participating Auditor are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, the Participating Auditor 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 Auditor 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.

Section 9.03 Notification of Claims/Events

The Participating Auditor 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 Auditor and/or a member of a Participating Auditor's staff. Accordingly, the Participating Auditor 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 Auditor'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.

Section 9.04 Information

The Participating Auditor shall not use information obtained from NYSERDA or NYSERDA's designees in conjunction with the Residential Energy Audit Program for any purpose other than to implement obligations under this Agreement.

The Participating Auditor acknowledges that information obtained from NYSERDA, or NYSERDA's designees, may include certain information concerning the Residential Energy Audit Program or Customers that is non-public, confidential, or proprietary in nature. The Participating Auditor 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.

Section 9.05 Program Participant Personal Private Information

All Participating Auditors performing work in association with the Residential Energy Audit Program 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 Auditors who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.

Section 9.06 Indemnification

The Participating Auditor 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 Auditor'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. Obligations of the Participating Auditor 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.