



## PON 2309 – Attachment C

# Low-rise Residential New Construction Programs **Partnership Agreement** For Builders, Home Energy Raters, Home Energy Rating Providers, and HVAC Contractors

## Low-rise Residential New Construction Programs - Partnership Agreement

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## Low-rise Residential New Construction Programs Partnership Agreement

New York State Energy Research and Development Authority (NYSERDA) Low-rise Residential New Construction Programs (Programs) incorporate the New York ENERGY STAR® Homes Program as well as NYSERDA's offer of eligibility for certain gut rehabilitation projects to participate and receive the alternative New York Energy \$mart<sup>SM</sup> designation. These Programs are designed and intended to encourage the construction of single-family homes and low-rise residential dwelling units which operate more energy efficiently, are more durable, more comfortable, and provide a healthier environment for their occupants than would otherwise be achieved. Technical assistance and financial incentives are offered to builders and developers, as well as to Residential Energy Services Network (RESNET) Home Energy Rating System (HERS) Providers and their Home Energy Raters to encourage the adoption of progressive building practices among professional homebuilders and developers while stimulating permanent consumer demand for dwellings that are significantly more energy-efficient than code-built homes. Higher incentives are now available, with eligibility based on the achievement of increased levels of energy performance, up to and inclusive of homes which are designed to achieve net zero energy performance through on-site production of at least as much energy as will be used in a year, when accounted for at the site.

These Programs were developed, in part, as a result of coordination with the United States Environmental Protection Agency (EPA), the Residential Energy Services Network (RESNET), Home Energy Rating Providers and their network of Home Energy Raters, as well as through collaboration with New York State's homebuilders. RESNET has adopted the Mortgage Industry National Home Energy Rating System (HERS) Standards as the national procedure for completing a Home Energy Rating to evaluate a newly constructed home's energy efficiency. HERS Standards are officially recognized by the EPA's ENERGY STAR Homes Program. NYSERDA's Programs are offered as an enhanced version of the EPA's ENERGY STAR Homes Program, incorporating innovative building practices and advanced technologies.

This Partnership Agreement ("Agreement") establishes the terms and conditions for Builders, Home Energy Raters, Home Energy Rating Providers, and HVAC Contractors to participate in these Programs (herein referred to as "Partner-Builder", "Partner-Rater", "Partner-Provider", and "Partner-HVAC Contractor"; and collectively referred to as "Partner(s)"). For the Partner-Builder, Partner-Rater, and Partner-Provider, this Agreement serves as an Addendum to their EPA ENERGY STAR Homes Partnership Agreement. To participate in these Programs, the Partner-Builder must secure and maintain the services of a Partner-Rater. Additionally, the Partner-Builder must secure the services of a qualified HVAC contractor per EPA requirements, and use of a Partner-HVAC Contractor can serve to ensure that requirement is met. The Partner-Builder and the Partner-Rater must verify compliance with Program requirements for any project where Program incentives are sought. This requirement extends to the Partner-HVAC Contractor, if one is used by the Partner-Builder. Requirements for accessing Program incentives are outlined in the attachments to PON 2309.

The Partner-Builder agrees to construct, and the Partner-Rater agrees to affirm the compliance of each home for which incentives will be sought such that the current EPA ENERGY STAR Partnership Agreement, RESNET Standards, PON 2309 requirements, and all terms of this Agreement are met. This requirement extends to the Partner-HVAC Contractor, if one is used by the Partner-Builder. NYSERDA agrees to provide technical, financial, and marketing support to Program Partners as detailed in Attachment A, which may include the following:

- Limited financial assistance for NYSERDA approved training and continued education;
- The opportunity to respond to leads generated from NYSERDA's large-scale public awareness campaigns;
- Financial incentives offered to the Partner-Builder to encourage the construction or erection of energy efficient residential new construction;

- Financial incentives for the First Plan Review and Confirmed Home Energy Rating provided to a Partner-Builder by a Partner-Rater, payable to either the Partner-Builder or the Partner-Rater;
- Financial incentives offered are offered to home owners or home buyers who will occupy the eligible home, if the household income of the newly constructed home's occupant(s) meet the Program's affordable housing criteria as detailed in the last section of the [Project Application](#);
- Financial incentives offered to the Partner-Provider for each Home Energy Rating successfully completed by their affiliated Partner-Raters for projects which participate in this Program;
- Financial incentives offered to Partner-Builders, Partner-Providers and Partner-Raters in support of marketing efforts consistent with Program objectives;
- Use of approved NYSERDA marketing materials which can be customized to include the Partner's logo and other company information; and
- Opportunities to participate in other NYSERDA pilot programs or initiatives.

Implementation and Support Services for these Programs are separately secured by NYSERDA through a competitive solicitation process, most recently published as the [Request for Proposal \(RFP\) 2522](#).

This Agreement is completely voluntary and may be terminated with written notice at any time and for any reason by either NYSERDA or the Partner. By executing this Agreement, the Partner agrees to play an active role in these Programs by providing high quality and professional residential new construction services. The Partner understands and agrees to all terms and conditions outlined in this Agreement and any associated Program Announcements distributed and/or posted by NYSERDA or NYSERDA's Implementation Contractor, all of which are incorporated herein by reference.

NYSERDA reserves the right to make changes to these Programs upon notice to the Partner. Such notification shall be sent to the Partner by e-mail and subsequently published within the appropriate section of [PON 2309](#). 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. This Agreement must be fully executed by NYSERDA for the applicant to be considered a Program Partner.

## **Article I. Partnership Application**

### **Section 1.01 Submission requirements:**

To become a Partner, the applicant must demonstrate to NYSERDA that the minimum eligibility requirements to serve as a Partner-Builder, Partner-Rater, Partner-Provider, or Partner-HVAC Contractor, as outlined in PON 2309 and its various attachments have been met. NYSERDA will evaluate each Partnership application prior to executing the Agreement. Key evaluation criteria include, but are not limited to: the applicant's commitment to ethical business practices, the ability to operate a business within the State of New York, and if applicable, the past performance of the applicant, e.g., the quality of work observed through the Program's quality assurance or quality control (QA/QC) process, willingness to correct deficiencies discovered during QA or QC inspections, and compliance with the terms of prior Agreements.

The applicant shall provide the information detailed below when submitting its application to NYSERDA for consideration. Program Partners must immediately submit any changes or updates to this information to NYSERDA, in writing, and verify the information's accuracy whenever requested by NYSERDA or NYSERDA's representatives:

- Legal Name and address of company, or any other names used (i.e., dba, etc.);
- Telephone Number, Fax Number, E-Mail Address;
- Names and titles of those persons authorized to represent the firm;
- Federal Employer Identification Number;

- Year firm was established;
- Name and address of parent company (if applicable);
- Indicate type of firm: Partnership, Corporation (indicate State incorporated in), Sole Proprietor, Joint Venture (list venture partners), LLP, LLC, or Other (explain);
- Partner-Builder applicants must identify the Home Energy Rater(s) that the Partner-Builder applicant intends to secure for purposes of participating in these Programs;
- Partner-Rater applicants must be affiliated with a Home Energy Rating Provider who has a fully executed Partnership Agreement with NYSERDA, and must identify their Home Energy Rating Provider on their Partnership Agreement Signature Form;
- Partner-Provider applicants must identify all Partner-Rater(s) who are currently affiliated with the Provider-Partner, or plan to serve projects as an affiliate to the Partner-Provider applicant. NYSERDA must be notified immediately whenever a Partner-Rater affiliation has changed, by either addition or deletion;
- List of all NYSERDA programs in which the business or its primary contact(s) have participated over the past five (5) years.

Applicants are prohibited from representing themselves as Program Partners or representing that they are eligible to provide Program benefits (incentives) unless and until this Agreement has been fully executed and emailed notification has been received from NYSERDA.

## **Section 1.02 To become a Partner, the following steps must be completed:**

### **(a) Become a Participant in the EPA ENERGY STAR for Homes Program**

The applicant must first achieve 'active' participation in the EPA's ENERGY STAR Homes Program. To view the details on the EPA's participation requirements and application process, or to verify active participation status in the EPA's ENERGY STAR Homes program, please contact the EPA directly by calling the ENERGY STAR Hotline (888) STAR-YES / (888-782-7937) or by visiting the EPA website: <http://www.energystar.gov>

NOTE: Partner-HVAC Contractor applicants may skip step (a).

### **(b) Select Program Partner(s)**

- An applicant applying to serve as a Partner-Builder in these Programs is required to contract with a Partner-Rater. It is the sole responsibility of the Partner-Builder to verify that the Home Energy Rater they have chosen is a participating Partner-Rater. Partner-Builder applicants may elect to hire a Partner-HVAC Contractor or, as an alternative, may secure the services of an alternatively qualified HVAC contractor per EPA requirements;
- An applicant applying to serve as a Partner-Rater must be affiliated with a Partner-Provider.

### **(c) Submit to NYSERDA**

Read PON 2309, agree to all terms outlined in this agreement, sign, and submit the completed Signature Form to NYSERDA at the address provided on the Signature Form. NYSERDA will only accept the original signed document. Signature Forms sent via fax, e-mail, or other electronic communication will not be accepted. All required documentation outlined in PON 2309 must accompany the Signature Form. Annual re-submission of a newly signed Signature Form and supporting documentation is required in order for a Partner to maintain their designated status. This form is due at the beginning of each calendar year unless notified otherwise by NYSERDA.

**(d) Receive confirmation from NYSERDA of the Agreement's execution**

NYSERDA will execute an Agreement only when the applicant has submitted all required information and the information is verified. The decision to fully execute an Agreement is at the sole discretion of NYSERDA.

## **Article II. Eligibility, Incentive Requests, and Incentive Payments**

### **Section 2.01 Eligible Building Type**

For the purposes of these Programs, residential new construction is defined as the ground-up new construction of residential dwelling unit(s) contained within buildings of not more than three (3) stories in height. Additionally, residential buildings which are more than three (3) stories in height and determined to be eligible to participate in the EPA's ENERGY STAR Homes program will be considered for eligibility on a case-by-case basis. Dwelling units which will be "gut-rehabbed" or fully rehabilitated will also be considered by NYSERDA for eligibility on a case-by-case basis. Gut rehab projects which are not able to meet specific aspects of the EPA ENERGY STAR Homes requirements as detailed in the EPA 'Water Management System Builder Checklist' may be eligible to participate and receive NYSERDA incentive as offered through PON 2309. Those gut rehab projects would not be designated as EPA ENERGY STAR Certified Homes but may be eligible for the New York Energy \$mart designation. Technical requirements are provided in more detail within Attachment B of PON 2309. Buildings which, per the 2010 Building Code of New York State, are defined as Institutional, or are R-1 and primarily transient in nature such as hotels or motels, are not eligible to participate. Sole discretion for determination of eligibility to participate resides with NYSERDA. Eligibility criteria and technical requirements are provided in more detail within Attachment A and Attachment B of PON 2309. Sole discretion for determination of eligibility to participate resides with NYSERDA.

### **Section 2.02 Incentive Eligibility**

Program benefits and incentives are offered in support of the construction, Home Energy Rating, and marketing of new residential dwelling unit(s) in compliance with all terms of this Agreement. To be eligible for incentives, the dwelling unit(s) must be located in the following electric or gas utility service territories: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc., PSEG Long Island<sup>1</sup>, or Rochester Gas & Electric Corporation. Other utility areas may be added during the term of this Agreement at the discretion of NYSERDA.

Projects that received any utility program incentive for a program funded through the System Benefits Charge (SBC) within one (1) year prior to the date of application to this Program are not eligible to participate in this program. Additionally, any project that is eligible to receive a payment under this Program agrees to NOT pursue any utility program incentive for a program funded through the System Benefits Charge within one (1) year. Any project that is found to have received a utility program incentive during this timeframe, even for improvements not included in the NYSERDA Project Work, will automatically forfeit their incentive payment(s) from NYSERDA and this Agreement shall be terminated.

### **Section 2.03 Incentive Requests**

Only those incentive requests which are complete, accurate, and submitted within the required timeframe will be accepted and processed. Incentive Applications and submission requirements are provided in Attachment A of PON 2309.

### **Section 2.04 Incentive Payments**

It is expressly understood that neither NYSERDA, nor its Program Implementation and Support Contractor, will initiate the processing of any Incentive Application until all required Program documentation has been received.

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<sup>1</sup> To be eligible to participate and receive incentives, dwelling units located in PSEG Long Island service territory must use natural gas, propane or oil as the primary heating fuel.



### **Article III. Technical requirements**

The Partner-Builder must meet the U.S. EPA's ENERGY STAR Certified Homes program and NYSERDA's requirements, inclusive of the Minimum Performance Standards as detailed in Attachment B of PON 2309.

### **Article IV. Consumer Relations**

#### **Section 4.01 Consumer Inquiries**

The Partner shall promptly and appropriately respond to any Program inquiries or referrals.

#### **Section 4.02 Consumer Referrals**

The Partner shall accept Program referrals and shall make every reasonable effort to encourage participation in these Programs. When providing Program services to these referrals, the Partner shall do so in accordance with all aspects of PON 2309, including this Agreement.

#### **Section 4.03 Timely Communication**

The Partner shall respond to consumer inquiries in a timely manner, and ensure prompt and accurate reporting, when requested by NYSERDA, regarding any resulting actions.

### **Article V. Business Practices and Related Requirements**

The Partner is expected to be an ambassador for NYSERDA and these Programs. Any conduct to the contrary will result in disciplinary action. Under this Agreement, each Partner commits to promoting these Programs and the mission of improving the energy performance, durability, comfort, and safety of newly constructed residential housing. All Partners shall remain in full compliance with the terms of this Agreement including the following business practices:

#### **Section 5.01 Professional Conduct**

The Partner shall treat all consumers fairly and deliver promised services in a timely, competent, professional, and reasonable manner. The Partner shall not engage in behavior that adversely impacts NYSERDA, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

#### **Section 5.02 Professional Courtesy**

The Partner and all its employees shall conduct themselves in a professional, respectful, and reasonable manner when interacting with any NYSERDA staff and representatives of NYSERDA's Program Implementation and Support Contractor, or Quality Assurance Contractor.

#### **Section 5.03 Service Levels to these Programs**

To retain eligibility to participate as a Program Partner, a minimum of one (1) project must be served by the Partner in each calendar year.

#### **Section 5.04 Program Representations**

The Partner shall not engage in unfair or inaccurate representations of NYSERDA, or NYSERDA's Program Implementer and Support Contractor, or Quality Assurance Contractor and affiliates.

##### **a) Partner**

The Partner shall properly and accurately represent the relationship of the Partner and its subcontractor(s) to the State of New York, NYSERDA, and to NYSERDA's Program Implementation and Support, and Quality Assurance Contractors. This relationship shall be that the Partner is independent of and voluntarily participating in these Programs.

The Partner shall not represent itself as working for, approved by, or certified by, the State of New York, NYSERDA, or their Program Implementation and Support Contractor. The Partner 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 the Program Implementation and Support Contractor.

**b) Non-Participating Subcontractor**

A non-participating subcontractor of a Partner shall not represent itself as a Program Partner or as able to offer Program services and benefits. Additionally, any subcontractor of a Partner shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or the Program Implementation and Support Contractor.

**Section 5.05 Distribution of Program Information**

**a) Distribution to a Non-Participating Contractor**

Program marketing materials are intended for the exclusive use by the Partner. Any Partner found to be providing Program marketing material to a non-participating builder or subcontractor, for the intent of distribution to prospective homebuyers by the non-participant, will be subject to disciplinary measures.

**b) Program Materials**

To ensure the homebuyer is educated and well informed of the features and benefits of these Programs and able to make an informed decision, the Partner shall distribute Program-related information and materials to its prospective customers.

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

All Partners must have and maintain an active e-mail account, maintain access to a computer with the capability to send and receive e-mails, and maintain the capability for proper use of the various forms provided. The Partner-Provider and Partner-Rater shall acquire and use RESNET-approved rating software for building analysis, energy savings estimation, and reporting. The Partner-Rater shall actively pursue training and become expert in the use of the RESNET-approved rating software.

**Section 5.07 New York State Uniform Fire Prevention, Building Code, and Energy Conservation Construction Code**

It is the sole responsibility of the Partner-Builder and its subcontractors to meet the requirements identified by the New York State Department of State Division of Code Enforcement and Administration in the New York State Uniform Fire Prevention, Building Code and Energy Conservation Construction Code and all other legal requirements for the construction or erection of the structure.

**Section 5.08 Licensing**

Currently, the State of New York does not require licensing of builders. However, counties and other local jurisdictions may require licensing. It is the sole responsibility of the Partner-Builder and its subcontractors, including their Partner-Rater, to obtain and maintain any licenses required for the construction of a new residential structure within the State of New York. The Partner-Builder and Partner-Rater shall produce copies of current licenses upon request by NYSERDA, or the Program Implementation and Support Contractor.

**Section 5.09 Permits**

It is the sole responsibility of the Partner-Builder and its subcontractors to obtain and comply with the terms of any permits required for the construction of a new residential structure. The Partner-Builder shall produce copies of applicable permits upon request by NYSERDA, or the Program Implementation and Support Contractor.

**Section 5.10 Insurance**

The Partner-Builder and Partner-HVAC Contractor shall maintain the insurance coverage associated with the construction or erection of a new residential structure; and the Partner-Rater and Partner-Provider shall maintain the insurance coverage associated with providing home energy rating services to builders of residential new construction projects; as required by the State of New York and the local municipalities. The Partner shall produce copies of insurance coverage upon request by NYSERDA, or the Program Implementation and Support Contractor.

**Section 5.11 Warranty**

The Partner shall provide a warranty in compliance with NYS General Business Law §777-a [1].



### **Section 5.12 Contract Compliance**

It is the sole responsibility of the Partner to ensure that all contracts and subcontracts used in the execution of providing Program services are written in full compliance with applicable federal, state, and/or local law(s).

### **Section 5.13 Dispute Resolution and Indemnification**

If any Partner, or subcontractor, becomes involved in a contractual or business practices dispute with respect to Program activities, the Partner(s) shall work to settle the dispute amicably utilizing fair and reasonable dispute resolution practices.

The relationship between the Partner-Builder and their Partner-Rater, the Partner-Builder and their Partner-HVAC Contractor, or the Partner-Rater and their Partner-Provider, are independent from NYSERDA or the Program Implementation and Support Contractor. Any disputes or contract issues which may arise between Partners are the sole responsibility of those Partners to resolve. NYSERDA and the Program Implementation and Support Contractor have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Partner(s) shall hold NYSERDA and its Program Implementation and Support Contractor harmless from any legal action arising from work associated with these Programs.

The Partner(s) shall protect, indemnify, and hold harmless NYSERDA 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, attorney's 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 the performance of this Agreement. The obligations of the Partner(s) under this section shall survive any expiration or termination of this agreement.

### **Section 5.14 The Partner understands and agrees that:**

- a) Relationship of the Parties: It is understood and agreed that the personnel furnished by the Partner to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be the Partner'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 Partner, 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 Partner for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

- b) No Benefits: The Partner agrees that if the personnel furnished by the Partner are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, the Partner 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 Partner agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.
- c) Notification of Claims/Events: The Partner 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 Partner and/or the Partner's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, the Partner 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 Partner'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 5.15 Survival**

All provisions Article V survive termination of this Agreement.

## **Article VI. Quality Assurance**

The goal of the Quality Assurance (QA) process is to verify that homes built with Program support meet all Program requirements while maintaining healthy and safe living conditions for the occupants. The QA function of these Programs does include both field inspections and an administrative review component. QA field inspections and administrative reviews are a crucial part of these Programs, providing NYSERDA and the Partner with valuable information related to compliance with the Program's technical requirements.

The Partner shall not inhibit or discourage Homebuyers from participating in the Program QA process and, if requested, shall provide project-related information in a timely manner.

## **Article VII. Partner Status Designations**

### **Section 7.01 Participation**

The Partner shall be classified in one of the participation status designations listed below. Each designation shall be subject to limitations, or requirements associated with that designation, as detailed below. 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 Partner's progression into and through each status designation. In all cases, NYSERDA's written decision is final.

#### **(a) Provisional**

New Partners are automatically assigned the participation status of 'Provisional'

##### **(i) Program Benefits**

The Partner will be eligible to receive Program incentives.

##### **(ii) Quality Assurance (QA)**

Projects completed by the Partner while on Provisional status are subject to enhanced QA oversight in accordance with Attachment J of PON 2309, which presents the QA Plan for these Programs.

Program Partners will retain Provisional status for, at a minimum, the first six (6) months of their Program participation. NYSERDA shall review the Partner's performance during the Provisional period and make a determination of the Partner's future participation status. NYSERDA may change the Partner's status to 'Full', extend their Provisional status, or place the Partner on Probation, Suspension, or Termination.

#### **(b) Full**

A Partner which is not operating under any of the other status designations, and which meets all requirements of these Programs, abides by the conditions of this Agreement, and provides quality services utilizing industry best practices shall have the status designation of 'Full'. A 'Full' Partner is entitled to all applicable Program benefits.

#### **(c) Inactive**

A Partner which voluntarily decides to end participation in these Programs will be placed in Inactive status. A Partner in 'Inactive' status has relinquished all privileges associated with participation, including access to incentives. The Partner must immediately remove any

Program references from any of their company's materials, inclusive of all marketing or advertising. To resume participation, the 'Inactive' Partner will need to reapply and be determined eligible. A Partner's status will automatically be designated as 'Inactive' if the Partner does not re-submit their Signature Form to NYSERDA for review and execution, in accordance with Section 1.02 (c) of this Partnership Agreement.

## **Section 7.02 Disciplinary Measures**

A Partner who fails to comply with any of the terms of this Agreement, or who provides fraudulent or misleading documentation, is subject to the provisions of this Section.

NYSERDA reserves the right to impose any of the following disciplinary measures at any time. In all cases involving a Partner's disciplinary status or denial of Program incentives, NYSERDA's written decision is final.

### **(a) Probation**

If the Partner is assigned the status of "Probationary", the Partner will be subject to a higher level of QA oversight. The Partner will be given a prescriptive list of items that must be addressed. A formal review and determination by NYSERDA, the Program Implementer, or the QA Contractor, to determine whether the Partner has satisfactorily addressed that prescriptive list of items will be completed. While on Probation, the Partner will maintain eligibility for Program incentives, including Marketing and Cooperative Advertising Incentives.

Grounds for Partner probation shall include, but are not limited to:

**(i) Non-Compliance with Program Requirements, Policies and Procedures**

The Partner has failed to adhere to Program requirements, policies and procedures as outlined in this Agreement, throughout PON 2309, or by Program announcements.

**(ii) Project Deficiencies**

The Partner has one or more deficiencies that remain unresolved for more than thirty (30) days following issuance of written notification to the Partner by NYSERDA, the Program Implementer, or the QA Contractor;

**(iii) Health and Safety Violations**

Within a six (6) month period, the QA process has identified two or more instances of Health and Safety violations.

### **(b) Suspension**

If the Partner is assigned the status of "Suspended", the Partner forfeits eligibility for Program incentives, including Marketing and Cooperative Advertising Incentives, and its customers will not have access to the Program's consumer incentives. NYSERDA has sole discretion in determining whether to suspend or terminate the Partner.

Grounds for Partner Suspension shall include, but are not limited to:

**(i) Unresponsive**

The Partner is on Probation status and has been either unresponsive to, or failed to adequately fulfill, the terms of its Probation.

**(ii) Non-Compliance with Program Requirements, Policies and Procedures**

The Partner has failed to adhere to Program requirements, policies and procedures as outlined in this Agreement, PON 2309, or Program announcements.

**(iii) Misrepresentation**

The Partner has submitted false or fraudulent documentation at any time, during any phase of participation in these Programs.

**(iv) Conviction(s)**

A Partner shall be immediately terminated if the Partner, or any principal of the Partner, is convicted of a felony or other criminal behavior that casts NYSERDA in negative light or calls the integrity or workmanship of the Partner into question.

**(c) Termination**

A Partner that lacks a current contractual relationship as a Program Partner is assigned the status of "Terminated". A Terminated Partner is no longer eligible for Program incentives, including Marketing and Cooperative Advertising Incentives, and its customers will not have access to the Program's consumer incentives. NYSERDA has sole discretion in determining whether to terminate a Partner. For NYSERDA to consider a Terminated Partner's request for renewed recognition as a Program Partner, all required documentation would need to be submitted as a new application.

Any Partner may be Terminated at any time, with or without cause. Cause for Termination may include the items listed as cause for suspension.