



**Home Energy Ratings Pilots  
Provider Participation Agreement**

***January 1, 2019 – December 31, 2021***

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## Article I. General Information

### Section 1.01 Provider

Provider:

(Business Name  
Business Address  
Business Phone  
Contact Name)

Pilot System:

(Pearl Home Certification or DOE Home Energy Score)

Pilot Market:

(Market Name)

Expiration Date:

December 31, 2021, or until funding is exhausted, whichever comes first

### Section 1.02 Definitions

- Home Energy Contractor  
A business that quotes, sells, and performs residential energy efficiency projects using best practices based on building science, as evidenced by appropriate training or certification credentials among its staff.
- Pilot Partner (Partner)  
A provider of pilot support services such as:
  - Training and mentoring
  - Quality assurance
  - Data collection and reporting
  - Invoicing
- Pilot Provider (Provider)  
A company that provides home energy ratings to homeowners through this pilot.

### Section 1.03 Pilot Overview

The New York State Energy Research and Development Authority (NYSERDA) is administering the Home Energy Ratings Pilots (Pilots) to assist New York homeowners in improving the energy performance, durability, comfort and safety of existing one- to four-family homes. The Pilots will last 2-3 years to establish home energy ratings in specific markets to increase consumer awareness and demand for energy efficiency services. The Pilots targets homeowners who are ready to invest in their homes and are looking for independent, trustworthy information. Contractors and home inspectors will be Providers and will provide homeowners with third-party home energy performance ratings including opportunities for improving their energy efficiency and therefore their home's comfort,

safety and cost performance. The Pilots will focus on two phases of the home ownership cycle: the home buyer and the existing homeowner (who may be concerned about comfort, efficiency, energy costs). The Pilots target market-rate homeowners, that is homeowners who are not eligible for low- or moderate-income services.

The **objectives** of the Pilots are to:

- Encourage homeowners to make energy efficiency upgrades
- Establish the best practices for implementing home energy ratings as a home energy contractor sales tool.
- Establish the best practices for delivering home energy ratings to home buyers.

Home Energy Ratings are similar to a Miles Per Gallon rating on a car, providing easy-to-understand visual reports that give the homeowner insight into how their home performs in areas like insulation, air sealing, heating & cooling efficiency, and hot water heating. Each rating comes with a list of recommendations or improvement plan that helps the homeowner plan upgrades to increase the efficiency, comfort, and value of their home.

Two home energy rating systems will be piloted: The US Department of Energy's Home Energy Score and Pearl Home Certification. Each rating system will be piloted in different geographic markets to avoid confusion and to help evaluate each rating systems' impact on the market independently.

These two rating systems will be tested in two pilots:

**Home Energy Contractor Pilot:**

Home energy contractors will be the Provider who will provide homeowners with third-party home energy ratings. The ratings will include opportunities for improving the home's energy efficiency and therefore its comfort, safety and energy cost performance. The pilot seeks to test the use of home energy ratings as a sales tool and their effectiveness in closing a project sale when delivered by home energy contractors.

- Initially, home energy contractors currently participating in, and in good standing with, NYSERDA's Home Performance with ENERGY STAR® program will be eligible to participate (Round 1 of PON 4038: Home Energy Rating Provider).
- Later, the Pilot will be expanded to add additional home energy contractors who may or may not already participate in a NYSERDA program (Round 3 of PON 4038: Home Energy Rating Provider).
- NYSERDA expects to include 24 to 36 home energy contractors to deliver 2,500 ratings.

**Home Inspector Pilot:**

Licensed home inspectors will be the Provider and will provide home energy ratings while conducting home inspections on behalf of home buyers. The ratings will include recommendations for improving the home's energy efficiency and therefore comfort, safety and energy cost performance. The Pilot seeks to test the use of home energy ratings delivered during home inspections as a means to encourage home energy improvements by the buyer during the first year or two of home ownership. Home buyers will also be provided with information about

how they can locate qualified contractors to make improvements.

- Initially, home inspectors who are early adopters will be eligible to participate in the Pilot (Round 2 of PON 4038: Home Energy Rating Provider).
- Later, the Pilot will be expanded to add additional participating home inspectors (Round 4 of PON 4038: Home Energy Rating Provider).
- NYSERDA expects to include 24 to 36 home inspectors to deliver 1,350 ratings.

NYSERDA relies upon Pilot Partners (and their sub-contractors) to provide Pilot implementation and support services such as:

- Training and mentoring
- Quality assurance
- Data collection and reporting
- Invoicing

Providers are independent contractors delivering building performance services and home inspections to homeowners.

This Participation Agreement (“Agreement”) establishes the terms and conditions for Providers to complete work through the Pilots.

A home energy contractor or home inspector is considered and referred to as a “Provider” hereinafter, only when this Agreement is fully executed by NYSERDA.

## **Article II. Participation Requirements**

### **Section 2.01 Provider Minimum Qualifications**

The Provider attests that they meet the minimum qualifications detailed in the Program Opportunity Notice (PON) 4038, available from NYSERDA’s Current Funding Opportunities page at <https://www.nysERDA.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>.

The Provider shall maintain the minimum qualifications throughout the duration of this Agreement. By entering into this Agreement, the Provider authorizes NYSERDA to share and obtain information with and from the Building Performance Institute (BPI) and other certifying bodies for the purpose of verifying employee certifications, and work quality.

### **Section 2.02 Certified Professionals**

Providers may only complete Ratings for which they have proper credentials. The certified professional(s) employed by a Provider shall ensure that Rating work performed in the Pilot adheres to the technical standards established and maintained by the appropriate credentialing organization.

### **Section 2.03 Pilot Market Territory**

NYSERDA will only provide reimbursement for ratings done within the approved pilot market territory. The Provider shall only offer Pilot services in the approved Pilot service territories listed in Section 1.01 above. A Provider offering Home Energy Ratings outside of their designated Pilot market can only be done by arrangement with a Pearl Certification or Home Energy Score

partner outside of the Pilots.

### **Section 2.04 Licensing**

It is the sole responsibility of the Provider to obtain and maintain any required federal, state, county, or municipal government licenses required for delivering Ratings through the Pilot, and to not perform any Ratings for which they are not licensed, if required. The Provider shall produce evidence of current licensing upon request by NYSERDA or its Pilot Partners. Failure to comply with licensing requirements may result in disciplinary action.

### **Section 2.05 Applicable Laws**

Providers must perform Pilot work in compliance with all applicable regulations, laws, and standards in the jurisdiction where completing Ratings. In instances where Pilot guidance may conflict with state and/or local regulation, then that regulation must take precedent.

### **Section 2.06 Health and Safety**

Each Provider must have a health and safety plan relevant to the work of gathering information for a home energy rating and maintain a copy of the plan accessible to all employees.

### **Section 2.07 Insurance**

The Provider, 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 Provider as the insured, and NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Pilot; (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.

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.

The Provider must provide proof of coverage as part of the pilot application process.

Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Provider shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Provider shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not make payments under this Agreement without current insurance certificates.

In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, the Provider shall deliver to NYSERDA a certified copy of each policy upon request.

Within five working days, or contemporaneously with the requirements of each insurance policy, the Provider shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Provider, any non-customer party to the applicable customer agreement or NYSERDA.

### **Section 2.08 Worker's Compensation**

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

If a Provider is identified as a Sole Proprietor, the Provider must complete and submit form CE-200:

[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

The Provider must provide proof of Worker's Compensation as part of the pilot application process.

### **Section 2.09 Customer Issue and Dispute Resolution**

The Provider must have a Customer Dispute Resolution Plan documented and on file with NYSERDA.

If a customer has a concern with their Home Energy Rating, the Provider shall investigate the concern and respond according to their Dispute Resolution Plan. If a corrected Rating needs to be generated for the home, the Provider must deliver the corrected Rating within 10 days of the determination that a corrected rating is required. NYSERDA will provide incentives to Providers for the first corrected Rating for the Provider after the Provider completes training and mentoring.

If a Provider becomes involved in a dispute with a customer over business practices, the Provider shall work to settle the dispute amicably utilizing the Provider's Customer Dispute Resolution Policy.

NYSERDA and its Pilot Partners have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Provider shall hold NYSERDA and its Pilot Partners harmless from any legal action arising from work associated with the Pilot. Failure to resolve customer issues in a timely manner may result in disciplinary action.

## Article III. Agreement Terms

### Section 3.01 Terms

Upon entering the Agreement, each Provider shall commit to promoting the Pilot and its mission of improving the energy performance, durability, comfort and safety of existing residential buildings, as defined by the Pilot.

The Provider acknowledges this Agreement is completely voluntary. NYSERDA may suspend or terminate a Provider from participation in the Pilot for any reason, including failure to maintain Pilot standards, poor performance, unresponsiveness or inappropriate behavior. In all cases involving a Provider's participation status, NYSERDA's written decision is final.

### Section 3.02 Participation

Following execution of this Agreement, the Provider agrees to be active contributor to the Pilot by providing high quality and professional services to Pilot customers. As a condition for ongoing Pilot participation and associated benefits, each applicant and Provider understands and agrees to the terms and conditions outlined in this Agreement, the Pilot Manual, and any Pilot Announcements distributed and/or posted by NYSERDA or the Pilot Partners.

### Section 3.03 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 3.04 Pilot Changes

NYSERDA reserves the right to make changes to the Pilot upon 30 days written notice to the Provider. Pilot changes communicated through emailed announcements will supersede policies and procedures in this Agreement and the Pilot Manual. It is the Provider's responsibility to ensure the appropriate Provider's contact email address is on file with NYSERDA in the event of staff or responsibility changes. Providers must have a dedicated staff person who will communicate with NYSERDA and can distribute information from NYSERDA to all staff participating in the Pilots. Providers shall promptly inform NYSERDA via email at [HomeScore@nyserda.ny.gov](mailto:HomeScore@nyserda.ny.gov) of any changes in contact information.

### Section 3.05 Post Termination Obligations

Articles VI through VIII and Section 2.04 to 2.09 shall survive termination of this Agreement.

## Article IV. Pilot Support

### Section 4.01 Pilot Support

Support services NYSERDA makes available to the Provider include the following, which are fully detailed in the Pilot Manual:

- (a) Financial incentives for Providers; NYSERDA will be providing incentives to cover some costs of the pilots. The incentive structure is detailed in the Pilot Manual.

- (b) The opportunity to respond to leads generated from NYSERDA’s public awareness campaigns, Community Energy Advisors, and the Pilot’s webpage;
- (c) Use of approved NYSERDA marketing materials that can be customized to include the Provider’s logo and other company information;
- (d) Third-party Quality Assurance;
- (e) Technical assistance;
- (f) Prompt payment for eligible incentives.

## **Article V. Pilot Relations**

### **Section 5.01 Inquiries**

Providers shall promptly, professionally, and courteously respond to inquiries from home owners/buyers, NYSERDA, and the Pilot Partners. Providers shall ensure prompt and accurate reporting of all pilot activity to the customer and the Pilot by following all workflow and procedural guidelines shown in the Pilot Manual.

### **Section 5.02 Consumer Referrals**

Providers are expected to generate their own leads to provide Ratings to market-rate homeowners. In the case that NYSERDA or the Pilot Partners send a referral to a Provider, the Provider shall accept the referral and make every reasonable effort to encourage customers to participate in the Pilot and, when providing Pilot services to these referral leads, do so in accordance with the Pilot guidelines, this Agreement and the contents of the Pilot Manual. Providers found to be actively discouraging customers from participating in the Pilot will be subject to the disciplinary measures detailed in Section 9.01 of this document.

## **Article VI. Business Practices**

The Provider is expected to be an ambassador for the Pilot and any conduct contrary will result in disciplinary action. Providers shall remain in full compliance with the following Pilot requirements:

### **Section 6.01 Contract Compliance**

It is the sole responsibility of the Provider to ensure that all contracts used during the Pilot by the Provider are written in full compliance with all applicable statutory or regulatory provisions. Contracts and other documents used by the Provider must be clear, legible, and include line item detail where appropriate.

### **Section 6.02 Professional Conduct**

The Provider shall comply with all Pilot guidelines, treat all customers fairly, provide accurate information on all available Pilot incentives, and deliver promised services in a timely, competent, professional, and reasonable manner.

### **Section 6.03 Professional Courtesy**

Providers shall conduct themselves in a professional, respectful, and reasonable manner at all times when interacting with customers, NYSERDA staff, and Pilot Partners. Providers shall not

engage in behavior that adversely impacts NYSERDA, or other Providers, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

#### **Section 6.04 Pilot Representations**

The Provider shall not engage in unfair or inaccurate representations of NYSERDA, the Pilot, the Pilot Partners, NYSERDA Community Energy Advisors, Community Partners, other Providers or Pilot affiliates.

The Provider shall properly and accurately represent the relationship of the Provider to the State of New York, NYSERDA, and NYSERDA's Pilot Partners. This relationship shall be that the Provider currently meets Pilot participation requirements, acts as independent contractor, and voluntarily participates in NYSERDA's Pilot.

The Provider shall not represent itself as working for, or certified by, the State of New York, NYSERDA or NYSERDA's Pilot Partners. The Provider shall not represent that the services they provide, or the materials they use, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Pilot Partners.

#### **Section 6.05 Proper Use of Pilot Marketing Material**

##### **(a) Required Pilot Material**

To ensure the customer is educated on the features and benefits of the Pilot and able to make informed decisions, the Provider shall distribute required Pilot information materials to the customer. Required Pilot materials accompany the Pilot Manual.

##### **(b) Distribution to Parties Outside the Pilots**

Marketing materials are only to be distributed by Providers. Any Provider found to be providing Pilot marketing materials to any party other than potential Pilot customers will be subject to disciplinary measures.

##### **(c) Website Content**

The Provider shall avoid publishing specific Pilot content and offerings and uploading copies of NYSERDA forms and applications on their individual company websites. Instead, Providers are encouraged to provide links directly to pertinent content, forms, and applications on NYSERDA's website to ensure the information provided is consistent and up to date for all interested parties.

Providers shall address any Pilot changes that may affect the content on their websites in a timely manner.

#### **Section 6.06 Computer, Operating System, and Internet Access Requirements**

##### **(a) Minimum Requirements**

The Provider shall have access to a computer with an operating system capable of running the required and necessary Pilot software. The Provider shall have an active email account(s) with the ability to receive emails from NYSERDA and Pilot Partners and check email on a regular basis for Pilot announcements and communications. The

Provider shall ensure the email addresses on file with the Pilot are current and must identify a Pilot contact. The Provider shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level available.

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

**(b) Software**

The Provider shall acquire and use Pilot-approved software for collecting data and generating the rating. A list of approved software is included in the Pilot Manual.

**(c) Use of Pilot Reference**

Should the Provider no longer participate in the Pilot, they are required to immediately remove all references to NYSERDA, the Pilot, and Pilot financing and incentives from the software that generates their reports as outlined in Section 9.01 of this Agreement.

**(d) Training**

The Provider shall actively pursue training provided by software vendor(s) supporting NYSERDA's Pilots and become proficient in the use of Pilot-approved software.

## **Section 6.07 Customer Personal Private Information**

**(a) Pilot Communications**

All Providers performing work in NYSERDA's Pilot are required to comply with the [NYSERDA External Contractor Data Security and Controls Policy](#). In general, when corresponding with customers, Pilot Partners, 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, instruct your customers to redact utility account numbers, social security numbers and bank account numbers if you are requesting documents containing this information. Providers who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.

## **Section 6.08 Standard Terms and Conditions**

**(a) Relationship of the Parties**

It is understood and agreed that the personnel furnished by the Provider to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be the Provider'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 Provider, 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 Provider 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 Provider agrees that if the personnel furnished by the Provider are determined to be “leased employees” within the meaning of section 414(n) of the Internal Revenue Code, the Provider acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and Pilots 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 Pilots. The Provider 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 Provider 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 Provider and/or the Provider’s personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, the Provider 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 Provider’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.

**(d) Information**

The Provider shall not use information obtained from NYSERDA or NYSERDA’s designees in conjunction with its participation in the Pilot for any purpose other than to implement obligations under this Agreement.

The Provider acknowledges that information obtained from NYSERDA, or NYSERDA’s designees, may include certain information concerning the Pilot or Pilot customers that is non-public, confidential, or proprietary in nature. The Provider agrees such information will be kept confidential and will not, without NYSERDA’s prior written consent, be disclosed by the Provider, its agents, employees, contractors, or professional advisors, other than is expressly required to implement its obligations under this Agreement.

**(e) Indemnification**

The Provider shall protect, indemnify and hold harmless NYSERDA its Pilot Partners, 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 Provider’s performance of this Agreement including, but not limited to, any claim or suit resulting from or related to mildew, fungus, moisture intrusion or mold of every type and

nature. The obligations of the Provider 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.

## **Article VII. Rating Requirements**

The Provider acknowledges that failure to follow Pilot requirements and procedures, including the data collection and reporting procedures and processing of completion documents contained in the Agreement, Pilot Manual, and Pilot Announcements, will result in the loss of applicable incentives, and disciplinary action.

### **Section 7.01 Project Oversight**

The Provider may only submit completion documentation for ratings that have had direct oversight by personnel with the appropriate professional certification(s) as determined by the Pilot.

The Provider shall ensure that personnel with the appropriate certification(s) perform all ratings.

### **Section 7.02 Use of Sub-Contractors**

The use of sub-contractors by Providers is prohibited. A Provider may not employ the services of sub-contractors to deliver Ratings in the Pilots.

### **Section 7.03 Home Energy Assessment Process and Report**

The Provider shall provide the customer with a finalized Rating report within 5 business days of site visit completion. The report shall be generated from Pilot-approved software. The Rating shall include all energy efficiency opportunities that exist in the home regardless of type of service(s) the Provider offers (i.e., a Provider with heating certification needs to identify applicable envelope issues in the report) while adhering to the policies and procedures. The report shall comply with the Pilot procedures documented in the Pilot Manual.

The Provider shall inform the homeowner of the requirement to complete the Home Energy Rating Utility Release Form and ensure its completion in order to qualify for a free or reduced cost Rating.

### **Section 7.04 Minimum Production Requirement**

The Provider is required to generate an average of five (5) completed Ratings per month on a rolling three (3) month basis. Following the execution of this Agreement, the Provider's performance will be evaluated at three (3) month intervals. Providers not on pace to meet minimum production requirements will be required to work with NYSERDA and submit a work plan for meeting Pilot production requirements. A Provider that fails to meet the production requirement six (6) months after the execution of this Agreement will be placed on probation for a period of 60 days. During each month of probation, the Provider will be required to meet the monthly production requirement. If a Provider fails to meet the production requirement during the probationary period, their participation in the Pilot will be subject to termination. Refer to Section 9.01 for additional information about probation and termination designations.

### **Section 7.05 Pricing**

The Provider shall apply fair and reasonable pricing when providing ratings. NYSERDA reserves the right to request additional information from Providers on pricing and to obtain comparative price quotes. The Pilot reserves the right to withhold Pilot incentives in cases where pricing does not appear to be fair and reasonable, or for which requested documentation has not been provided.

During the initial pilot period while NYSERDA is providing incentives at an initial level, Providers may not charge customers for the Ratings. See Section 4a of the Pilot Manual for more information about Pilot incentives.

### **Section 7.06 Rating Incentive Processing**

It is expressly understood that NYSERDA and the Pilot Partners will not initiate the processing of any incentive payment to a Provider until all required Rating documentation has been received and verified as accurate. The list of required Rating documentation is provided in the Pilot Manual.

### **Section 7.07 Repayment or Recapture of Pilot Incentives**

The Provider acknowledges that failure to follow Pilot requirements and procedures contained in this Agreement, the Pilot Manual, and future Pilot Announcements will result in a loss of applicable incentives and possible disciplinary action.

The Provider also acknowledges that if NYSERDA determines that the Provider has not strictly adhered to the terms and conditions of the Pilot on a Rating, any Pilot incentives paid to the Provider for the Rating, shall be repaid to, or recaptured by, the Pilot from the Provider. Upon notice from NYSERDA, the Provider shall provide NYSERDA direct payment within thirty (30) days for the identified outstanding value of any Pilot incentives paid on Ratings that do not comply with Pilot terms, conditions, policies or procedures identified in this Agreement, the Pilot Manual, or Pilot Announcements.

### **Section 7.08 Mechanics Lien**

The Provider shall agree to limit any Mechanics Lien on any Rating to the value of such Rating minus the value of the incentive.

### **Section 7.09 Dwellings Owned by Employees**

Prior to performing a Rating, the Provider must promptly notify the NYSERDA in writing if any personal or business relationship exists with any household served by the Provider to the Pilot, or if the Provider intends to provide services to a dwelling owned by any principal or employee of the company.

## **Article VIII. Quality Assurance**

The main goal of the Pilot Quality Assurance (QA) process is to verify that Ratings meet all Pilot requirements. The secondary goal of the Pilot QA process is to identify Providers who regularly provide effective, high quality services to their customers, and to support their efforts. A third goal is to enable early detection of performance and compliance issues, at both individual

Provider and Pilot-wide levels, to support prompt resolution, identify needs for development or delivery of training, and ensure market confidence. Providers who cannot regularly complete ratings meeting the standards of the Pilot are subject to Probation, Suspension and Termination from the Pilot. The QA process for the Pilot includes desk and field reviews and QA inspections.

The current Pilot QA procedures are in the Pilot Manual, and any updates will be issued to the QA contact for all Providers as necessary to comply with changing standards or meet the goals of the Pilot. Providers shall be responsible for staying current with all revisions to the QA section of in the Pilot Manual, relevant industry technical standards and the applicable Home Energy Rating system procedures.

The Provider shall not inhibit or discourage customers from participating in the Pilot QA process and shall make a good faith effort to facilitate the Pilot QA process. A customer may request a QA Field Inspection up to three months after the delivery of a Pilot rating; however, the Pilot goal is to conduct QA Field Inspections within 30 days from delivery of the rating report.

The Provider shall provide related information to NYSERDA and its Pilot Partners, upon request. This information may include but is not limited to: the approved software files, contracts, notes, and photos.

## **Article IX. Provider Status Designations**

### **Section 9.01 Participation Statuses**

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

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

##### **(i) Minimum Period of Performance**

The Provider shall have the participation status of 'Provisional' during, at a minimum, the first three (3) months of participation. During this time, NYSERDA may limit the number of Ratings that can be delivered without mentoring by a Pilot Partner based on customer complaints, QA reviews, or other competence and/or compliance issues deemed by NYSERDA as cause for limitation.

##### **(ii) Pilot Benefits**

The Provider will be eligible for Provider incentives, its customers will have access to all Rating services offered through the Pilots.

##### **(iii) Complete Training**

The Provider must complete rating system training and if required, a certification test before delivering their first rating during the Provisional period.

##### **(iv) Complete Mentoring Requirements**

After completing training, the Provider must participate in required mentoring

during their Provisional status participation period. Mentoring requires the Pilot Partner to oversee and coach the Provider on at least their first rating after training.

**(v) Quality Assurance (QA)**

The Provisional Provider must complete a minimum of five (5) Ratings meeting the minimum standard QA requirements.

At any time during, or at the end of a Provider's Provisional period, NYSERDA can change the Provider's status to Probation, Suspension, or Termination for any reason including, but not limited to poor workmanship, lack of responsiveness, customer complaints, unprofessional behavior, or failure to meet minimum production requirements of the Pilot.

**(b) Full**

A Provider who is not operating under any of the other status designations described herein, abides by the conditions of this Agreement and provides quality services utilizing industry best practices shall have the status designation of Full Status Provider. Full Status Providers are entitled to all applicable Pilot benefits. Full Status Providers may have different QA inspection rates.

**(c) Inactive**

This status includes Providers voluntarily deciding to end participation in the Pilot. A Provider in Inactive status will relinquish all privileges associated with participation, including access to incentives. The Provider must immediately remove any reference to the Pilot from any of the Provider's materials. To resume participation, the Provider will need to apply to the Pilot as a new Provider, if an additional PON Round is available.

**(d) Disciplinary Action**

Reserved for Provisional and Full Status Providers who fail to comply with any of the terms of this Agreement, and the Pilot Manual or who provide fraudulent or misleading Pilot documentation, is subject to the provisions of this Section. Providers under Disciplinary Action have been notified in writing by the Pilot and are under disciplinary action for a set time frame or until the conditions of their disciplinary action notice have been met.

NYSERDA reserves the right to impose any of the following disciplinary measures at any time. In addition, NYSERDA reserve the right to hold incentive payments while investigating alleged issues. In all cases involving a Provider's disciplinary status or denial of Pilot incentives, NYSERDA's written decision is final.

**(i) Probation**

Probationary Status is reserved for Providers that have failed to meet the requirements of the Pilot. Probation is prescriptive in nature with both a specific list of results to be achieved and a time frame for achieving those results.

- a. Minimum Period of Performance-** A Probation period will last no less than thirty (30) days with terms outlined in the disciplinary action letter to

the Pilot.

- b. Pilot Benefits-** Under the Probation Status, the Provider will be eligible for all Provider incentives, its customers will have access to all Pilot services.
- c. Quality Assurance (QA)-** Under the Probation Status, the Provider may be subject to increased QA inspection rates that, if applicable, will be defined in the terms of their disciplinary letter from the Pilot.

A Provider may be placed on Probation for any of the following reasons:

- a. Violation of Pilot Policies and Procedures or Ethical Standards-**The Provider has failed to adhere to Pilot policies and procedures as outlined in this Agreement. This includes but is not limited to poor or unclear documents, misrepresentation of available customer incentives, poor quality of work, repeated submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, performing work in municipalities they are not licensed to work in, failure to submit overpayment reimbursements in a timely manner, and not obtaining proper licensing and/or permits.
- b. Minimum Production-** A Provider is not meeting the minimum production requirements of the Pilot.
- c. Failure to meet Quality Requirements-** Failure to consistently deliver completed Ratings which pass the QA standard required for 'Full' status.
- d. Health and Safety -** Failure to take effective corrective action on a critical health or safety observation.
- e. Unresponsive to QA Feedback-** One or more QA inquiries from the Pilot Partner that have not been responded to or remain unresolved for more than fifteen (15) business days.
- f. Customer Complaints-** NYSERDA and/or its Pilot Partners have received one or more valid customer complaints per quarter, the Provider is unresponsive or slow in resolving customer issues or does not comply with their Customer Dispute Resolution Plan, exhibits poor quality workmanship or unprofessional manner on one or more projects.
- g. Provider is Not Licensed –** NYSERDA is informed that the Provider performed Pilot work in a municipality where they are not licensed.
- h. Failure to Follow Pilot Procedure-** The Provider continuously submits incorrect or incomplete documentation or requires an excessive amount of administrative or technical support.

While on Probation, the Provider must continue to put work through the Pilot and

meet minimum production requirements. In the event a Provider is placed on Probation and fails to meet the terms of the Probation, the Pilot, at its discretion, may elect to suspend or terminate the Provider for failure to meet the terms of Probation.

**(ii) Suspended**

A suspended Provider shall be removed from the NYSERDA website and shall not represent themselves as a Provider, accept any applications for, nor recruit new participants except in the execution of remedial action as approved by NYSERDA. A Suspended Provider forfeits its eligibility for Provider incentives and its customers will not have access to services offered through the Pilot. NYSERDA has sole discretion in determining whether to suspend a Provider. With Pilot Manager permission, a Suspended Provider may be allowed to close out in progress Ratings. Ratings may be subject to increased QA inspection rates that, if applicable, will be defined in the terms of their disciplinary letter from the Pilot. NYSERDA has sole discretion in determining the length of the Suspension Period. Grounds for suspension shall include, but are not limited to, the following:

- a. Unresponsive-Probation-** The Provider is on probationary status and has either been unresponsive to, or failed to adequately fulfill, the terms of their probation
- b. Unresponsive-Other-** The Provider is unresponsive to addressing outstanding customer concerns, Corrective Action Reports, incentive over payment reimbursements or requests from the Pilot Manager or Pilot Partners.
- c. Violation of Pilot Policy and Procedures or Ethical Standards-** The Provider has failed to adhere to Pilot policies and procedures as outlined in this Agreement, thereby putting the Pilot, NYSERDA, and customers at risk. This includes but is not limited to poor or unclear documents, misrepresentation of available customer incentives, poor quality of work, repeated submissions of inaccurate, incomplete, illegible or otherwise faulty documentation, performing work in municipalities they are not licensed to work in, and not obtaining proper building permits.
- d. Provider Staffing-** The Provider has staffing changes or staffing certification status changes resulting in the Provider not maintaining the minimum Pilot certification requirements.
- e. Misrepresentation**  
The Provider has submitted false or fraudulent documentation to the Pilot at any time, during any phase of participation in the Pilot. This includes, but is not limited to forging customer signatures, falsifying existing onsite conditions and submission to Pilot of work not completed.

**(iii) Terminated**

Providers designated with the 'Terminated' status are prohibited from participation in the Pilot for the remainder of the Participation Agreement term. A Terminated Provider shall be removed from the NYSEERDA website and shall not represent themselves as a Provider. A Terminated Provider forfeits its eligibility for Provider incentives and its customers will not have access to Pilot services. All references to NYSEERDA must be removed from all marketing materials, vehicles, and advertising including vehicle clings and website as applicable.

Customers with incomplete Ratings will be notified of the termination and may be offered such remedies as NYSEERDA deems appropriate. If appropriate, NYSEERDA may notify the New York State Attorney General, the New York State Department of Labor, the Better Business Bureau, or others of NYSEERDA's findings and decision to terminate the Provider. Further, the officers and owners of the terminated Provider are prohibited from being or becoming officers or owners of any other Provider. In the event a terminated Provider's company is sold to new owners, it is NYSEERDA's sole discretion whether to allow the terminated Company's name, or similar derivations, to once again be considered for Pilot Participation. Nothing in this process relieves the Provider of the responsibility to fulfill any remaining obligation to the Pilot, or Pilot customers.

NYSEERDA has sole discretion in determining whether to terminate a Provider. A Provider may be terminated from participation in the Pilot for any of the following reasons:

- a. Has been on suspended status for more than 30 days and has been unresponsive to or failed to adequately fulfill the terms of their suspension
- b. Loss of qualifying certifications while Suspended
- c. Submits falsified documents or unauthorized signatures to the Pilot
- d. Commits illegal actions while participating in the Pilot
- e. Is convicted or has a principal who is convicted of a criminal charge that casts the Pilot in negative light or calls the integrity or workmanship of the Provider into question
- f. Is in gross violation of Pilot standards
- g. Fails to meet the terms of the Provisional period