



# **Delmarva Power Home Performance with ENERGY STAR<sup>®</sup> Program**

## **Participating Contractor Agreement**

**(Funded by EmPOWER Maryland)**

Delmarva Power and Light Company (“Delmarva Power”) has established a residential Home Performance with ENERGY STAR<sup>®</sup> Program (“Program”) in its Maryland service territory as one of its EmPOWER Maryland energy conservation programs. The Program is offered in partnership with the national Home Performance with ENERGY STAR, which is sponsored by the U.S. Department of Energy (“DOE”). The Program is designed to improve the energy performance, durability, healthiness, and safety of existing small residential buildings in the Delmarva Power service territory, through the services of trained and certified contractors that use state-of-the-art diagnostic tools and the principles of building science. The Program offers financial incentives to participating homeowners and contractors for the installation of qualifying energy efficiency measures. Delmarva Power has retained ICF International (“Program Implementer”) to administer the Program.

The Participating Contractor Agreement (“Agreement”) is between the contractor submitting this agreement form (“Participating Contractor”) and Delmarva Power. This Agreement sets out the terms and conditions under which the Participating Contractor shall participate in the Program. Under this Agreement, the Participating Contractor will contract with property owners to provide building performance consulting and/or installation services that are in compliance with Program requirements and standards. Delmarva Power, in return, agrees to provide technical and marketing support for the Participating Contractor.

This Agreement is completely voluntary and can be terminated at any time for any reason by either Delmarva Power or the Participating Contractor with prior written notice from the terminating party to the other party. In the event of termination of the Participation Agreement for non-compliance, the Participating Contractor will be notified of such termination in writing, and will be allowed thirty (30) days from the date of the notification to submit any remaining documentation for qualifying equipment or improvements that had been installed previously by the Participating Contractor.

In consideration of the terms of this Agreement, the parties mutually agree to the following.

## **SECTION 1 PROGRAM PROJECTS**

### **1.1 Covered Energy Efficiency Projects**

The Program provides incentives for Participating Contractors to provide building performance services that comply with Program requirements and standards to owners of electrically heated or centrally cooled homes. These services include: home performance assessments, attic and roof insulation, wall insulation, targeted air sealing, and duct sealing. The Program also offers free installation of minor electric saving measures such as: compact fluorescent light bulbs (CFLs), electric water heater tank wraps, electric water heater pipe insulation, low-flow showerheads, and faucet aerators during the Home Performance Assessment at no additional cost to the customer. Participating Contractors will also inspect for any heating, ventilation, and air conditioning health and safety issues.

## **SECTION 2 SERVICES PROVIDED TO PARTICIPATING CONTRACTORS**

### **2.1 Program Services and Benefits**

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

- The opportunity to respond to leads generated from the Program's public awareness campaign;
- Use of Program required software. The Program required software serves several functions, including: recording field Home Performance Assessment results, calculating energy savings, analyzing the cost effectiveness of work scopes, and producing an energy efficiency report designed to provide an estimate of costs and energy savings of the proposed measures;
- Use of approved Program marketing materials, which can be customized with prior approval to include the Participating Contractor's logo and other company information;
- Listing of Participating Contractors on the Program website, accessible to customers, once Participating Contractors have met the following requirements: (1) execution of a Contractor Participation Agreement and (2) submittal of documentation of required license and insurance;
- Exclusive access for the Participating Contractors' customers to the participant incentive options offered through the Program, as filed with and approved by the Maryland Public Service Commission (and as funds are available); and as outlined in the Contractor Guidebook;
- Web-based Program communications for customer referral, project tracking, and reporting;
- Program support and training for the Participating Contractor on service delivery, reporting, and payment procedures;
- Training and support in the energy-use education that Participating Contractors will provide to participating households;
- Six (6)- to eight (8)-week turnaround payment timeframe for eligible services provided under the Program;

- Quality assurance and quality control with prompt feedback to the Participating Contractor to ensure adherence to high standards of quality; and
- Easy access to the Program Implementer for prompt response to Program issues.

### **SECTION 3 PROGRAM REQUIREMENTS**

#### **3.1 General Business Practices**

Participating Contractor shall:

- Respond to customer inquiries in a timely manner and ensure prompt and accurate reporting of home performance assessments and project completions to the Program;
- Act as appropriate ambassadors and marketers for the Program;
- Treat all customers fairly and deliver promised services in a timely, competent, and responsible manner;
- Conduct themselves in a professional and respectful manner when interacting with customers and any Delmarva Power, Program Implementer, and/or the Program Implementer's Quality Assurance staff;
- Comply with Program terms and Building Performance Institute (BPI) standards, maintain satisfactory and professional customer interaction, provide timely completion of work and/or Delmarva Power's directives;
- Properly and fully present Program features and benefits to the customer so that the customer may make an informed decision about the implementation of measures in their residence, and refrain from unfair or inaccurate characterizations of Delmarva Power, the Program, the Program Implementer, or BPI;
- Inform customers of and offer program-approved Direct Install Measures at no additional cost to the customer's existing Delmarva Power service. Upon the customer's selection of program-approved Direct Install Measures, the Participating Contractor is required to install the measures in the customer's residence;
- Comply with all Delmarva Power marketing and communications guidelines. Participating Contractor shall not use Delmarva Power's logo or Delmarva Power Home Performance with ENERGY STAR in promotions or advertising without the prior express written consent of Delmarva Power. Participating Contractor shall not communicate with the media about the Program without written authorization and coordination with Delmarva Power;
- Provide all customers with required customer and Program information materials;
- Provide the homeowner with a professional report containing comprehensive recommendations for improving the energy efficiency, comfort, and safety of the home. The report must include an estimate of the total energy savings from the proposed improvements, equivalent to the maximum attainable energy savings specific to the home. Give the customer a written warranty of labor and materials for a minimum of one (1) year from the date the service is performed;
- Provide, for any equipment installed, the manufacturer's warranty plus optional extended warranty coverage, if applicable;

- Maintain accurate business records relating to the installation of qualifying improvements according to customary industry practice for at least one (1) year following installation. Business records must be made available for verification by Delmarva Power if requested; and
- Rectify, prior to any work being completed in the home, any health and safety issues identified during the energy assessment, including but not limited to carbon monoxide, asbestos, mold and lead. The Participating Contractor will need to have verification via program approved diagnostic equipment that the proper remediation has been completed prior to starting the recommended HPwES work in a customer's home. If the Participating Contractor becomes involved in a dispute with a customer regarding work performed or business practices, the Participating Contractor shall work with Delmarva Power and its Program Implementer to resolve the dispute amicably. If such discussion does not produce an outcome acceptable to the customer and the Participating Contractor, the Participating Contractor shall settle the dispute through the Participating Contractor's customer complaint resolution process on file with BPI, or with the Program Implementer. In accordance with Section 9, below, Participating Contractor shall hold Delmarva Power and its Program Implementer harmless from any claim or suit arising from work in the Program, including, but not limited to any claim or suit resulting from or related to mechanical equipment combustion safety, indoor air quality, asbestos, lead abatement, mildew, fungus, moisture intrusion, or mold of every type and nature.

### **3.2 Approval of Projects**

- Participating Contractor shall obtain from customers all required authorizations, including the landlord/property owner's permission to perform the work, if the customer is a tenant;
- Participating Contractor shall obtain customer sign-offs that work was completed;
- Participating Contractor shall comply with all Program requirements for obtaining approval of project scopes of work and determination of eligibility of measures for Program customer incentives, including pre-approval of project scope of work in order to obtain approval of low-interest loans for Participating Contractor's customers that are subsidized by the Program; and
- Any measures submitted for payment of incentives that have not been fully completed, or that have been fully completed but have not received prior approval if required, shall not be accepted by the Program. These measures will be ineligible for any Program benefits and the Participating Contractor shall assume all financial liabilities associated with these measures.

### **3.3 Post-Installation Work Verification and Quality Assurance**

- Participating Contractor shall allow Delmarva Power or the Program Implementer to conduct random field inspections of work that has been performed;
- Participating Contractor understands that Delmarva Power will inspect a minimum of 7% of all jobs performed by each contractor participating in the Program in this manner;
- Participating Contractor, upon request of Delmarva Power or the Program Implementer, and at no additional cost to the customer, shall make reasonable repairs or corrections to work that Participating Contractor has performed to bring such work up to Program standards. This requirement survives the termination of this Agreement;
- Participating Contractors recently joining the Program may be subject to a higher inspection percentage. For example, three (3) of the first five (5) jobs may be inspected;

- If any health and safety issue is found at the time of test-out, the Participating Contractor must submit documentation that the proper remediation of the health and safety issue has been completed in order for the customer rebate application to be considered complete; and
- Should any non-compliance issues be discovered as a result of these inspections, the Program Implementer will notify the Participating Contractor. Within thirty (30) days of the notification, and at no additional cost to the customer, the Participating Contractor shall make any required health and safety repairs or corrections, and/or reasonable repairs needed to bring such work up to Program standards. **All serious health and safety non-compliance issues associated with the project must be rectified by the Participating Contractor immediately.**

### **3.4 Hardware and Software Requirements**

- Participating Contractor must have a computer with an operating system capable of running the necessary Program software, and must be able to receive electronic mail and attachments from Delmarva Power and its Program affiliates;
- Participating Contractor must possess the required diagnostic equipment, in good working order, follow manufacturer's recommended intervals for calibration, and have the ability to deploy it at each participating business location prior to commencing comprehensive energy assessments and installing measures under the Program;
- Participating Contractor shall use the Program mandated modeling software ("the Software") for building analysis and energy savings estimation and shall become properly trained in the use of the Software; and
- Participating Contractor must provide the Program Implementer, for each Home Performance Assessment submitted, with the entire report produced by the Software. This report should include a detailed work scope proposal that includes measures for improving the energy efficiency, comfort, and safety of the home and which estimates the energy savings from the project. The report should include all energy efficiency, comfort, health and safety opportunities (per Program guidelines and protocols) in the customer's home regardless of whether the Participating Contractor offers these services.

### **3.5 Required Job Volume**

During the first and each succeeding year of participation (determined by date of activation of this Agreement), Participating Contractor shall report to the Program a minimum of ten (10) completed jobs per year to be considered an active Participating Contractor within the Program. If this production is not met by the Participating Contractor, a review (conducted bi-annually) will take place requiring the Participating Contractor to submit an updated business plan to the Program.

### **3.6 Use of Subcontractors to Complete Projects**

- Participating Contractors are responsible for all of the work performed by subcontractors, including ensuring that subcontractors adhere to Program policies and standards;
- Upon request, the Participating Contractor must provide information related to all subcontractors providing Program services, fully describing the nature of these relationships, ownership data, and other information requested by Delmarva Power; and

- Participating Contractor cannot employ as a subcontractor any firm that has been suspended or terminated from this Program or any other Delmarva Power program without Delmarva Power's prior written permission. Failure to do so may result in disciplinary action and/or termination from the Program.

### **3.7 Payment Handling and Requirements**

- For each completed Home Performance Assessment ("the Assessment"), Participating Contractor must submit (within 30 days of the completion of the assessment), via the Program Participating Contractor Web Portal, information from the Assessment, including the date of the Assessment, information to identify the customer, list of direct install measures provided, and a list of proposed Home Performance with ENERGY STAR project measures with cost and savings information to the Program Implementer;
- Participating Contractor must adhere to the Assessment pricing as outlined in Exhibit 3.8.1 of this Agreement;
- Participating Contractor is responsible for collecting the co-payment for the Assessment specified in Exhibit 3.8.1 of this agreement;
- Payment for the balance of the Assessment cost, including direct install measures, will be made directly to the contractor via direct deposit or check sent through the mail;
- For each completed home performance job, Participating Contractor must utilize the Participating Contractor Web Portal to report the actual measures installed, and must submit a completed test-out form, signed by the customer, a copy of the Program-mandated modeling software report, and a copy of the invoice presented to the customer for the work performed (within 30 days of the completion of the measures installed);
- Delmarva Power and the Program Implementer will not approve payment for a home performance measure customer incentive without documentation of a completed Home Performance Assessment, documentation of work completed, reporting of estimated savings, required customer sign-offs, and other project details as required; and
- Compliance with all Program guidelines is a prerequisite for payment for a particular Home Performance Assessment or payment of incentives to the customer of a Participating Contractor.

### **3.8 Pricing**

The current Pricing Schedule ("Schedule") for services and measures that must be adhered to by Participating Contractors is as follows. This Schedule is subject to change upon thirty (30) days' written notice to Participating Contractors:

## Exhibit 3.8.1 Participating Contractor Pricing

Effective January 1, 2016–December 31, 2016

Home Performance Assessment (Energy Audit) Fee

Minimum \$400.00

Home Performance Assessment Includes:

1. Blower door test
2. Mechanical Ventilation Testing
3. CAZ worst case depressurization test
4. Combustion efficiency and safety test
5. Zone Pressure Diagnostic test (if applicable)
6. Program mandated modeling software report, including Beacon HEA Customer Report and/or Prioritized List of Measures, as applicable
7. Commitment to perform test-out if work is performed by auditing contractor

The Home Performance Assessment Fee will be paid as follows:

- Homeowner co-payment direct to Participating Contractor: \$100.00\*
- Maximum amount of Program incentive to Contractor: \$300.00

\*Participating Contractor has the option to charge the customer more than \$100 for homes > 3,000 square feet and/or homes with multiple CAZ areas.

Direct Install Measure Installation Fees (covers time and materials)		
Direct Install Measure	Fee Paid	Max Installed
<b>Light Emitting Diodes (LEDs)</b>		
9W A19	\$5.80/bulb	one (1) bulb
<b>Compact Fluorescents (CFLs)</b>		
13W	\$4.81/bulb	up to 12 total
18W	\$4.84/bulb	
23W	\$4.87/bulb	
9W Mini Globe	\$3.51/bulb	
9W Candelabra	\$4.85/bulb	
14W Type A	\$4.56/bulb	
16W R30	\$5.90/bulb	
23W R40	\$5.82/bulb	
12/22/33W 3-Way	\$6.17/bulb	
23W Dimmable Spiral	\$4.60/bulb	
<b>Domestic Hot Water (DHW)</b>		
3/4" Pipe Insulation	\$17.44/system	no max
Electric Tank Wrap	\$40/unit	no max
<b>Water Conservation</b>		
ShowerStart Adapter™	\$25.50/each	Two (2) units
Low-Flow Showerhead (fixed)	\$18/each	up to 2 total
Low-Flow Showerhead (handheld)	\$25/each	
Low-Flow Aerator (kitchen)	\$6/each	up to 4 total
Low-Flow Aerator (bath)		
<b>Plug Load Control</b>		
Smart Strip	\$31.70/each	Two (2) units

## **SECTION 4 PARTICIPATION REQUIREMENTS**

Participating Contractor agrees to play an active role in the Program and provide high-quality building performance services to Program customers. Participating Contractors acknowledge and agree that they participate in the Home Performance with ENERGY STAR Program at the sole discretion of Delmarva Power and the Program Implementer and are subject to removal from the Program if they fail to comply with the terms and the spirit of this Agreement.

In order to become and to remain a Participating Contractor, the Participating Contractor must elect a contractor business model and comply with the following requirements.

### **4.1 Participating Contractor Business Model Election**

The Participating Contractor will be designated within the Program as either Full Service ("Full Service Participating Contractor") or Consultant ("Consultant Participating Contractor"). A Consultant will only provide Home Performance Assessments and perform follow-up assessments ("Test-Outs") after completion of any home performance improvements by a Full Service Participating Contractor. A Full Service Participating Contractor may provide home performance improvements as well as Home Performance Assessments and Test-Outs.

- As of January 2016, all Participating Contractors shall maintain a valid Maryland Home Improvement Contractors (MHIC) license;
- Submit a sample Comprehensive Home Energy Audit report to be used for reference purposes only by the Implementer; and
- Participating Contractors should only use HVAC Contractors/Installers participating in Delmarva Power's HVAC Rebate Program whenever HVAC measures are to be completed as part of the Home Performance with ENERGY STAR project.
  
- A Consultant Participating Contractor shall:
  - a. Not perform any home performance improvements;
  - b. Inform its customers that having home performance improvements done by a company that does not maintain a MHIC license is a violation of Maryland law; and
  - c. Inform its customers that no Program customer incentives will be paid unless home performance work is performed by a Full Service Participating Contractor within Delmarva Power's Home Performance with ENERGY STAR Program.

### **4.2 Documentation Requirements**

Participating Contractor shall submit the following to the Program Implementer:

- Documentation of the Participating Contractor's business structure (i.e., sole proprietorship, corporation, LLC, LLP, General Partnership, Limited Partnership);
- Name and title of individual executing this Agreement on behalf of the legal entity and evidence that he or she has the authority to bind the company or organization;
- Documentation that the Participating Contractor or a predecessor entity or management of entity has owned, operated, or managed a licensed contracting or home improvement business



for a period of not less than three (3) years; or Participating Contractors new to the industry will be required to provide, to the satisfaction of the Program Implementer in its sole reasonable discretion, a description of steps taken to develop the capacity to provide service, including: energy efficiency tools owned, past experience related to energy efficiency work, and Participating Contractor plans for developing a business;

- Proof that they have at least one (1) employee certified by BPI as an Envelope Professional;
- MHIC License Number; and
- EPA Lead-Safe Certification.

The Participating Contractor shall also:

- Ensure that personnel conducting Home Performance Assessment and all BPI-required test-in and test-out tasks are BPI certified, under the current adopted standards, to at least the Building Analyst level;
- Be a contractor in good standing listed on the Maryland Energy Administration's (MEA's) website listing trained and certified home performance contractors;
- Comply with any applicable County or Municipal licensing requirements; and
- Disclose any prior and current participation in Delmarva Power's various demand side management programs. The names of any owners, officers, directors, members, principals, shareholders, associates, employees, agents, and subcontractors affiliated with the Participating Contractor that have previously participated in, or are currently participating in, any of Delmarva Power's programs, including the HVAC Efficiency Program and Income Eligible Energy Efficiency Program, must be provided to Delmarva Power. This is an ongoing requirement. As such, throughout the term of this Agreement, the Participating Contractor shall notify Delmarva Power immediately of any changes or updates to this information.

#### **4.3 Certification Requirements**

In order to participate in the Program and to continue as a qualified participant, Participating Contractor shall:

- Ensure that personnel conducting Home Performance Assessment and all BPI-required test-in and test-out tasks are BPI certified to at least the Building Analyst level;
- Ensure that BPI-certified personnel with the appropriate certification for the work being performed supervise all jobs performed under the Program, whether performed by the Participating Contractor's own employees, or by a subcontractor;
- Provide the Program Implementer with the names and BPI certifications for staff assigned to each jurisdiction. This is an ongoing requirement. As such, throughout the term of this Agreement, the Participating Contractor shall notify Delmarva Power or the Program Implementer immediately of any changes or updates to this information;
- Employ the services of other companies with BPI certified personnel when unsupervised subcontracting of work is necessary;
- Ensure that employees receive training, at a minimum, to meet the requirements of BPI's continuing education credits;
- Maintain good standing BPI certification throughout the term of this Agreement;

- Notify BPI and the Program immediately should it be in noncompliance with any BPI certification requirements; and
- Maintain effective procedures for quality control as required by BPI, for resolution of customer complaints or disputes, and for response to customer emergencies. Upon request, Participating Contractor shall make these procedures available to Delmarva Power or the Program Implementer for review and improvement.

#### 4.4 Insurance Requirements

Participating Contractor shall maintain insurance as follows, and provide evidence of current coverage upon request by Delmarva Power or its Program Implementer:

Insurance Description	Program Requirement
Workers' Compensation	Statutory Workers' Compensation in accordance with Maryland state and local requirements
Employer's Liability	Amount not less than \$1,000,000 each occurrence or illness
Commercial General Liability	Amount not less than \$1,000,000 each occurrence
Business Automobile Liability	Amount not less than \$1,000,000 each occurrence
Excess/Umbrella	Amount not less than \$1,000,000 each occurrence <b>OR</b> Commercial General Liability and Business Automobile Liability in amounts not less than \$2,000,000 each occurrence
Professional Liability, Errors and Omissions	Recommended (not required) to hold an amount not less than \$1,000,000 each occurrence

- The general, automobile, and excess/umbrella (if any) liability coverage held by the Participating Contractor shall name Delmarva Power and the Program Implementer as additional insured. All coverage obtained and maintained by the Participating Contractor shall be primary to and non-contributory with any and all applicable coverage held by Delmarva Power or the Program Implementer. All coverage obtained and maintained by the Participating Contractor shall contain waiver of subrogation, cross-liability coverage, and severability of interests language.
- Neither Delmarva Power nor the Program Implementer shall be responsible for any deductibles, self-insurance retention, and/or waiting periods that may appear in the policy.
- Receipt or failure to receive or failure to request any certificate of insurance for any of the required insurance coverage and limits shall not act or be construed as an approval of Participating Contractor's insurance or as a release or waiver of the Participating Contractor's obligation to provide any or all of the insurance coverage and limits required therein. Said certificate shall contain evidence that the policy or policies shall not be canceled without providing at last thirty (30) calendar days' prior written notice to Delmarva Power.

**SECTION 5**  
**MINIMUM REQUIREMENTS FOR PARTICIPATING CONTRACTOR'S PERSONNEL**

As a condition of participating in Delmarva Power's Home Performance with ENERGY STAR Program, Delmarva Power requires that Participating Contractor's employees meet certain minimum standards, as outlined below:

- **PARTICIPATING CONTRACTOR SHALL NOT ALLOW ANY INDIVIDUAL WITH A PAST FELONY CONVICTION TO PERFORM WORK UNDER DELMARVA POWER'S HOME PERFORMANCE WITH ENERGY STAR PROGRAM.** Participating Contractor shall have a background investigation conducted on all its employees who will be assigned to perform work for Participating Contractor for which the customer will seek a rebate under Delmarva Power's Home Performance with ENERGY STAR Program. Participating Contractor shall require any subcontractors not under direct supervision of the Participating Contractor's employees, performing work for customers under Delmarva Power's Home Performance with ENERGY STAR Program to similarly conduct a background investigation on all subcontractor employees who will be assigned to perform such work. Such background investigation shall, at a minimum, include a complete criminal history records check conducted no more than one (1) year prior to assignment to the Program, which shall report all felony convictions within the previous seven (7) years. Such background investigation shall be conducted by a competent professional organization and shall be in compliance with the Fair Credit Reporting Act and applicable state laws.
- Delmarva Power requires that all employees of Participating Contractor who perform work under Delmarva Power's Home Performance with ENERGY STAR Program be free of drugs and the influence of alcohol. All such employees, when reporting for duty and while on duty, must be "fit for duty," defined as the appropriate mental and physical condition necessary to perform work in a safe, competent manner, free of the influence of drugs and alcohol. Possession of drugs, drug paraphernalia, and alcohol is prohibited at any customer home.

**SECTION 6**  
**PARTICIPATING CONTRACTOR STATUS AND**  
**SUSPENSION AND TERMINATION OF PARTICIPATING CONTRACTORS**

Delmarva Power or its Program Implementer may suspend or terminate Participating Contractor's participation in the Program for any reason, including failure to maintain Program standards. In all cases involving a Participating Contractor's participation status, or denial of Program incentives, Delmarva Power's written decision is final.

Participating Contractors who submit fraudulent information or data to the Program are subject to immediate termination from the Program.

Participating Contractors shall be classified in one of the following participation status designations. Each classification shall be subject to limitations or requirements associated with that designation. Delmarva Power reserves the right to modify the definition, limitations, and requirements of these statuses. Delmarva Power retains sole judgment over determining a Participating Contractor's progression into and through each status designation.

**Provisional** – All Participating Contractors during their first six (6) months of Program participation. Provisional Participating Contractors are entitled to all applicable Program benefits. Projects completed by Participating Contractors on Provisional status will receive enhanced quality assurance/quality control oversight. During this status, applying contractors agree to the following:

- Account Management and/or Quality Assurance visit on first three (3) of six (6) audits, completed within 90 days from the start of the Provisional status, where at least two (2) of those audits must have a combustion fueled heating source that requires a full BPI compliant CAZ test. These Quality Assurance visits are to be scheduled Monday through Friday between the hours of 7am and 4pm.
- Account Management and/or Quality Assurance visit on first three (3) of six (6) jobs where at least two (2) of those jobs must have a combustion fueled heating source that requires a full BPI compliant CAZ test. These Quality Assurance visits are to be scheduled Monday through Friday between the hours of 7am and 4pm.

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

**Probationary** – Participating Contractors who have been found to be in violation of Program or ethical standards, or who have a continuous low quality assurance score shall be placed on Probationary status. The Probationary period will not be less than thirty (30) days. During the Probationary period, Participating Contractors shall:

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

Upon review of the action plan submitted, Probationary period quality assurance results, and prior to the end of the Program's determined Probationary period, Delmarva Power will make a determination on the Participating Contractor's participation status going forward. This determination may include: continued probation, Full participation status, suspension, or termination. During the Probationary period, the Participating Contractor will maintain its eligibility for Participating Contractor incentives and posting on the Program's website.

**Suspended** – Applies to Participating Contractors who:

- Are on Probationary status and have either been unresponsive to or failed to adequately fulfill the terms of their probation, or;
- Have been placed on probation twice in a twelve (12)-month period, or;

- As determined by Delmarva Power or the Program Implementer, have engaged in practices that have put the public, or Program, at risk, or;
- Have had their certification suspended by BPI due to work quality or health and safety issues.

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

**Terminated** – Participating Contractors may be terminated from the Program if they:

- Have been on Suspended status for more than thirty (30) days and have been unresponsive to Delmarva Power or its Program Implementer, or failed to adequately fulfill the terms of their suspension, or;
- Have had their certification terminated by BPI, or;
- Commit illegal actions while performing services for the Program, provide non-authorized signatures on documents, or violate Program standards.

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

In addition, if the Participating Contractor has participated in the Program previously or in any Delmarva Power program within the past year, the Participating Contractor shall demonstrate satisfactory past performance in Delmarva Power program(s), past compliance with Program terms and BPI standards, satisfactory and professional customer interaction, timely completion of work, and response to customer complaints or Delmarva Power directives. Failure to promptly provide such information about past performance will compromise Participating Contractor's eligibility.

**SECTION 7**  
**OTHER CONDITIONS FOR HOME PERFORMANCE WITH ENERGY STAR PROGRAM**

Participating Contractors who submit one (1) or more Home Performance with ENERGY STAR Program projects also agree to the following additional conditions:

- Agree to perform work in a manner consistent with the Program procedures, as outlined in the Program Guidelines and Procedures Manual, and in accordance with the standards of BPI;
- Recognize that customer personal data and utility usage information that may be shared with the Participating Contractor must be treated as confidential and not disclosed to any party other than Delmarva Power and the Program Implementer, in accordance with applicable law. The requirement for confidential treatment of customer information shall survive the termination of this Agreement; and
- Delmarva Power reserves the right to make changes to the Program upon notice to the Participating Contractor. Such notification shall be by email and posting on the Program's Participating Contractor website.

**SECTION 8**  
**INDEPENDENT CONTRACTOR STATUS**

The Participating Contractor is acting as an independent contractor under this Program and is not acting as an agent of Delmarva Power or the Program Implementer.

Participating Contractor's employees, agents, and subcontractors ("personnel") shall at all times act as independent contractors and shall not be considered employees or agents of Delmarva Power. Neither Participating Contractor nor its personnel shall have, nor represent themselves as having, any authority to approve or accept any proposal on behalf of Delmarva Power or the Program Implementer, or make any promise, representation, contract, or other commitment binding upon Delmarva Power or the Program Implementer.

All Participating Contractor personnel shall be under the exclusive supervision, direction, and control of Participating Contractor. Participating Contractor shall have the right to control the details of the work performed by its personnel. Participating Contractor shall establish all necessary rules, regulations, and procedures related to the performance of Services.

Participating Contractor shall accept full and exclusive liability for its personnel's salaries, employee benefits, allowances for vacation, sick leave, holiday pay, employee insurance and retirement benefits, all payroll taxes, workers' compensation and employer's liability insurance, and other insurance premiums measured by payroll costs, other contributions and benefits imposed by any applicable law or regulation, plus all Participating Contractor personnel expenses incurred in conformance with standard Participating Contractor policy, including travel, accommodation, and subsistence expenses. Delmarva Power shall not be responsible for Participating Contractor personnel administration matters as such

relate or are applied to such personnel including, without limitation, pay, internal discipline, equal opportunity, or discrimination claims.

Should Delmarva Power or the Program Implementer be required to pay any amount to a governmental agency for failure by the Participating Contractor (or its subcontractors) to withhold any amount as may be required by law, the Participating Contractor agrees to indemnify each Delmarva Power and the Program Implementer, as the case may be, for any amount so paid, including interest, penalties, and fines.

Neither Delmarva Power nor the Program Implementer, nor their affiliates, subsidiaries, or successors are, or shall be construed to be, an employer (common law or otherwise), co-employer, or joint employer of any Participating Contractor personnel.

## **SECTION 9 LIMITATION OF LIABILITY AND INDEMNITY**

In no event shall Delmarva Power or the Program Implementer have any liability for claims of any kind, whether based on contract, tort (including negligence and strict liability), or otherwise, for any loss or damage sustained or incurred by any third party, including any customer, relating to this Agreement or the performance of services or participation by the Participating Contractor in the Program. The Participating Contractor hereby releases and discharges Delmarva Power and the Program Implementer from all liability for such claims.

The Participating Contractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Delmarva Power and the Program Implementer and their respective affiliates, officers, directors, agents, employees, and representatives from and against any and all losses, claims, damages, expenses (including attorney's fees and costs), and liabilities for property damage or bodily injury arising out of the performance of the services or participation by the Participating Contractor in the Program.

## **SECTION 10 TERM AND TERMINATION**

Regardless of the execution date, this Agreement will expire on December 31, 2016, unless otherwise extended in writing by the parties or terminated earlier by Delmarva Power for cause or convenience.

Delmarva Power may at any time terminate this Agreement or the subject Home Performance with ENERGY STAR Program in whole or, from time to time, in part for the convenience of Delmarva Power by written notice to Participating Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims that Delmarva Power may have against Participating Contractor.

**SECTION 11**  
**TRADEMARKS AND OTHER INTELLECTUAL PROPERTY**

- Delmarva Power reserves all ownership rights in Delmarva Power and Delmarva Power affiliate trademarks, service marks, and intellectual property. Except as expressly provided in this Agreement, Delmarva Power does not transfer or license any trademark or other intellectual property right to Participating Contractor.
- Any use by Participating Contractor of Delmarva Power or Delmarva Power affiliate trademarks, service marks, and intellectual property is subject to the prior written consent of Delmarva Power. Any such authorization shall be solely for the purposes contemplated by this Agreement. The Participating Contractor shall not register, apply to register, or claim any rights to any Delmarva Power or Delmarva Power affiliate trademark, service mark or intellectual property.
- Upon expiration or termination of this Agreement, Participating Contractor agrees to immediately cease the use of and shall not thereafter use of Delmarva Power or Delmarva Power affiliate trademarks, service marks, and intellectual property.
- For purposes of this Agreement, Delmarva Power or Delmarva Power affiliate trademarks, service marks, and intellectual property shall include any trademarks, service marks, names, logos, and designs of Delmarva Power and its affiliates (including the Program marketing materials) that are now or hereafter owned, claimed, adopted, acquired, or used by Delmarva Power or its affiliates, whether or not federally registered.

**SECTION 12**  
**GOVERNING LAW**

This Agreement shall be construed by, and interpreted in accordance with, the laws of the State of Maryland.

**SECTION 13**  
**SURVIVAL**

The representations, warranties, and covenants contained and/or made in this Agreement shall survive the termination of this Agreement and the performance of the work contemplated by this Agreement.

**SECTION 14**  
**ASSIGNMENT**

This Agreement may not be assigned by the Participating Contractor without the express written consent of Delmarva Power.



**SECTION 15  
SEVERABILITY**

If any provision of this Agreement shall be construed to be illegal or invalid, it shall not affect the legality or validity of any of the other provisions hereof, and the illegal or invalid provisions shall be deemed stricken and deleted hereof to the same extent and effect as if never incorporated herein, but all other provisions hereof shall continue.

**SECTION 16  
NON-WAIVER**

A failure by Delmarva Power to exercise any right hereunder, or otherwise waive or condone any delay or failure by Participating Contractor to comply with any of the terms or conditions of this Agreement shall not constitute a continuing waiver of any such requirement or provision, or any rights of Delmarva Power hereunder.

**SECTION 17  
ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements, proposals, promises, and representation of the parties respecting the subject matter hereof. No representation or promise hereafter made, nor any modification or amendment of this Agreement, shall be binding upon either party, unless made in writing and signed by the parties hereto.

**SECTION 18  
NOTICE**

Any notice required or permitted to be given under this Agreement shall be deemed properly given at the time it is personally delivered or mailed, properly addressed and postpaid, to the address provided herein by the Program Implementer and by the Participating Contractor, or at such other addresses as may be specified in writing.

**To the Program Implementer:**

Delmarva Power MD HPwES Program  
c/o ICF International  
7125 Thomas Edison Drive, Suite 100  
Columbia, MD 21046

**To Participating Contractor:**

At address specified in Agreement (Section 21, below).

**SECTION 19**  
**SECTION HEADINGS**

The section headings contained in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope or intent of this Agreement and do not in any way affect its provisions.

**SECTION 20**  
**CONSTRUCTION**

This Agreement was negotiated jointly by the parties, and no rule that it be construed against the drafter will have any application in its construction or interpretation.

**SECTION 21**  
**AGREEMENT**

**21.1 Participating Contractor Certification:**

By signing this Agreement, Participating Contractor's representative is certifying that:

- Participating Contractor does not have any unresolved or outstanding complaints before the Maryland State Department of Labor, Licensing, and Regulation or a pattern of outstanding litigation that involves his or her work;
- Participating Contractor's representative has the necessary legal authority to act on Participating Contractor's behalf;
- All of the information supplied below is accurate;
- Participating Contractor has read, understood, and agreed to all of the definitions, terms, and conditions that are a part of this Agreement and the referenced Program Guidelines and Procedures Manual; and
- Participating Contractor acknowledges that failure to follow Program requirements and procedures, including submitting necessary documents, will jeopardize Participating Contractor's ability to receive incentives under the Program.

*I certify under the penalties of law that the statements made in this Agreement, and in supporting documentation provided along with this Agreement, have been examined by me and are true and complete. I understand that by signing this Agreement, I consent to any other inquiry to verify or confirm the information I have given. I hereby authorize any reference identified or provided to Delmarva Power by Participating Contractor to release to Delmarva Power any information pertaining to past or present relevant work. I hereby release from all liability or damage, Delmarva Power and those persons, agencies, or organizations who may furnish such information.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Title: \_\_\_\_\_ Company Name: \_\_\_\_\_

## **21.2 Required Documentation**

Please upload the following documentation to complete application for participation:

1. IRS W-9 (Tax ID number)
2. Maryland MHIC License Copy of EPA Lead-Safe Certification
3. Certificate(s) of Insurance (may also be mailed by insurance companies to the address below)
4. Copy of Diverse Supplier Certificate (if applicable)
5. Signed copy of this Contractor Participation Agreement

Mailed copies of Certificate(s) of Insurance must be sent to the following address:

Delmarva Power MD HPwES Program  
c/o ICF International  
7125 Thomas Edison Drive, Suite 100  
Columbia, MD 21046