

# **New Jersey Utility Whole Home Energy Solutions Program Participating Contractor Agreement**

The New Jersey Utilities (“Utilities” and individually a “Utility”)<sup>1</sup> have established a residential “Whole Home Energy Solutions program” in their New Jersey service territory as one of its Energy Efficiency programs established as a result of the 2018 Clean Energy Act. The Whole Home Energy Solutions program is designed to improve the energy performance, durability, healthiness, and safety of existing small residential buildings in the service territory of participating utilities, through the services of trained and certified contractors that use state-of-the-art diagnostic tools and the principles of building science. The Whole Home Energy Solutions program offers financial incentives to participating homeowners and contractors for the installation of qualifying energy efficiency measures.

The Participating Contractor Agreement (“Agreement”) is between the contractor submitting this agreement form (“Participating Contractor”) and the participating New Jersey electric and gas public utilities (“Utilities”) (Participating Contractor and Utilities may be referred to herein individually as a “Party” or collectively as the “Parties”). This Agreement sets out the terms and conditions under which the Participating Contractor shall participate in the Whole Home Energy Solutions 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 the Whole Home Energy Solutions program requirements and standards. The Utilities, in return, agree to provide technical and marketing support for the Participating Contractor. Depending on the Whole Home Energy Solutions project location and overlap with other Utilities, the Participating Contractor will be working with a specific lead Utility, which in turn will work in partnership with the overlapping Partner Utility.

This Agreement is completely voluntary and can be terminated at any time for any reason by either the Utilities 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 noncompliance, 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.

Some utilities may directly contract with a third party to help support the administration of this program. Such entities will be referenced as a Program Implementer (“Program Implementer”) throughout this Agreement.

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

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<sup>1</sup> The New Jersey Utilities (“Utilities”) are the following seven utilities: Atlantic City Electric, Jersey Central Power & Light, Rockland Electric Company, Public Service Electric and Gas, New Jersey Natural Gas, Elizabethtown Gas, and South Jersey Gas.

## **SECTION 1**

### **WHOLE HOME ENERGY SOLUTIONS PROGRAM PROJECTS**

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

The Whole Home Energy Solutions program provides incentives and financing offerings to the homeowners to participate in the Whole Home Energy Solutions program and receive “whole house” services provided by one of the Participating Contractors. Those services will comply with Whole Home Energy Solutions program requirements and Building Performance Institute (“BPI”) standards to perform work in natural gas and electric customer’s homes. After the in-home assessment is completed by the Participating Contractor and any health and safety issues have been addressed, these Whole Home Energy Solutions projects may include, but shall not be limited to, the following types of measures: (1) insulation, (2) air sealing with pre-/post-blower door testing, (3) duct sealing, (4) duct insulation, (5) exhaust ventilation fans, (6) heat/energy recovery ventilator, (7) HVAC-integrated with fan control and mechanical damper, (8) heating system (furnaces/boilers/heat pumps, including geothermal), (9) cooling system (central and mini-split systems), (10) water heaters (tank, tankless, indirect fired, heat pump), and (11) direct install measures (only for PSE&G customers).

## **SECTION 2**

### **SERVICES AVAILABLE TO PARTICIPATING CONTRACTORS**

#### **2.1 Whole Home Energy Solutions Program Services and Benefit**

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 Whole Home Energy Solutions program’s public awareness campaign;
- Use of Whole Home Energy Solutions program-required software. The Whole Home Energy Solutions program-required software serves several functions, including: recording field Whole Home Energy Assessment (“the 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 Whole Home Energy Solutions program marketing materials, which can be customized with prior written Utility approval to include the Participating Contractor’s logo and other company information;
- Listing of Participating Contractors on the Whole Home Energy Solutions 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 for all Utilities where the Participating Contractor plans to perform services;
- Web-based Whole Home Energy Solutions program communications for project funding reservation, project tracking, and reporting;

- Whole Home Energy Solutions 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- to eight-week turnaround payment time frame for eligible services provided under the Whole Home Energy Solutions 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 Utility staff and/or Program Implementer, where applicable, and prompt response to Whole Home Energy Solutions program issues.

### **SECTION 3 PROGRAM REQUIREMENTS**

#### **3.1 Contractor Requirements**

As a condition of participating in the Whole Home Energy Solutions program and accessing the Utility's program benefits, Participating Contractor certifies and confirms that it shall:

- Conduct business successfully;
- Have been in business for more than one year;
- Be registered with the New Jersey Department of Revenue;
- Be registered with the state of New Jersey as a business and hold a license (e.g., Home Improvement Contractor, HVAC Contractor) applicable to the work that Participating Contractor will perform under the Whole Home Energy Solutions program);
- Have a \$1M general liability insurance coverage;
- Have a federal tax ID number; and
- Be New Jersey-based and agree to fully participate in the Energy Efficiency Jobs program as well as agree to hire New Jersey residents for new/replacement jobs (PSE&G only).

#### **3.2 General Business Practices**

Participating Contractor shall:

- Respond to customer inquiries in a timely manner (within three business days) and ensure prompt and accurate reporting of Whole Home Energy Assessments and project completions to the Whole Home Energy Solutions program;
- Act as appropriate ambassadors and marketers for the Whole Home Energy Solutions 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 Utility, Program Implementer, and/or the Program Implementer's quality assurance staff;

- Comply with Whole Home Energy Solutions program terms and BPI standards, maintain satisfactory and professional customer interaction, provide timely completion of work and/or Utilities' directives;
- Properly and fully present Whole Home Energy Solutions 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 Utilities, the Whole Home Energy Solutions program, the Program Implementer, or BPI;
- Comply with all Utilities' marketing and communications guidelines. Participating Contractor shall not use any Utility's logo or any Utility's Whole Home Energy Solutions program in promotions or advertising without the prior express written consent of such Utility. Participating Contractor shall not communicate with the media about the Whole Home Energy Solutions program without written authorization and coordination with a lead Utility;
- Provide all customers with required customer and Whole Home Energy Solutions 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 year from the date the service is performed;
- Provide, for any equipment installed, the manufacturer's warranty plus optional extended warranty coverage, if applicable;
- Provide customers with the option to participate in Utilities' financing offering to help offset costs of upgrades not covered by incentives with a low- or no-cost loan provided by Utilities;
- Maintain accurate business records relating to the installation of qualifying improvements according to customary industry practice for at least one year following installation. Business records must be made available for verification by Utilities 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 issues. The Participating Contractor will need to have verification via Whole Home Energy Solutions program-approved diagnostic equipment that the proper remediation has been completed prior to starting the recommended Whole Home Energy Solutions program 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 Utilities and its Whole Home Energy Solutions 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, or with the Utility or Program Implementer. In accordance with Section 9, below, the Participating Contractor shall hold Utilities and its Program Implementer harmless from any claim or suit arising from work in the Whole Home Energy Solutions 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. Participating Contractors may be subject to the Contractor Remediation Procedures as laid out by the Utilities, available [here](#).

### **3.3 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 signoffs of satisfactory completion of work;
- Participating Contractor shall comply with all Whole Home Energy Solutions program requirements for obtaining approval of project scopes of work and determination of eligibility of measures for Whole Home Energy Solutions program customer incentives, including preapproval of project scope of work in order to obtain approval of low- or no-interest loans for Participating Contractor's customers that are subsidized by the Whole Home Energy Solutions program; and
- Any measures submitted for payment of incentives that have not been fully completed, or that have been fully completed but were not included in the original scope of work, shall not be accepted by the Whole Home Energy Solutions program. These measures will be ineligible for any Whole Home Energy Solutions program benefits, and the Participating Contractor shall assume all financial liabilities associated with these measures.

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

- Participating Contractor shall allow Utilities or the Program Implementer to conduct random field inspections of work that has been performed;
- Participating Contractor understands that Utilities will inspect a minimum of 10% of all jobs performed by each contractor participating in the Whole Home Energy Solutions program in this manner;
- Participating Contractor, upon request of Utilities 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 Whole Home Energy Solutions program standards. This requirement survives the termination of this Agreement;
- Participating Contractors recently joining the Whole Home Energy Solutions. However, existing Whole Home Energy Solutions contractors in good standing with New Jersey's Clean Energy Program will be grandfathered in;
- 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 noncompliance issues be discovered as a result of these inspections, the Utility or Program Implementer will notify the Participating Contractor. Within 30 days of the notification, and at no additional cost to the customer, the Participating Contractor shall make any required health and safety repairs or corrections, and/or reasonable repairs needed to bring such work up to Whole Home Energy Solutions program standards. All serious health and safety noncompliance

issues associated with the project must be rectified by the Participating Contractor immediately. Participating Contractors are subject to the Utilities' Contractor Remediation Procedures, which can be accessed [here](#).

### **3.5 Hardware and Software Requirements**

- Participating Contractor must have a computer with an operating system capable of running the necessary Whole Home Energy Solutions program software, and must be able to receive electronic mail and attachments from Utilities and Whole Home Energy Solutions 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 Whole Home Energy Solutions program;
- Participating Contractor shall use the Whole Home Energy Solutions 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 Utility or Program Implementer, for each Whole Home Energy 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 that estimates the energy savings from the project. The report should include all energy efficiency, comfort, and health and safety opportunities in the customer's home, regardless of whether the Participating Contractor offers these services.

### **3.6 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 Whole Home Energy Solutions program a minimum of 10 completed jobs per year within the state of New Jersey to be considered an active Participating Contractor within the program. If this production is not met by the Participating Contractor, a review (conducted biannually) may take place requiring the Participating Contractor to submit an updated business plan to the Whole Home Energy Solutions program.

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

- Participating Contractors are responsible for all of the work performed by subcontractors, including ensuring that subcontractors adhere to Whole Home Energy Solutions program policies and standards;
- Upon request, the Participating Contractor must provide information related to all subcontractors providing Whole Home Energy Solutions program services, fully describing the nature of these relationships, ownership data, and other information requested by Utilities; and
- Participating Contractor cannot employ as a subcontractor any firm that has been suspended or terminated from this program or any other Utilities program without Utilities' prior written

permission, to be coordinated among the Utilities. Failure to do so may result in disciplinary action and/or termination from the Whole Home Energy Solutions program.

### **3.8 Payment Handling and Requirements**

- For each completed Whole Home Energy Assessment, Participating Contractor must enter the data points into the Whole Home Energy Solutions program's software tool, where the contractor also enters existing conditions and proposed measure/scope of work to model energy savings and calculate the appropriate incentive levels and determine the financing amount, if needed. Once the proposed measures and financial offerings have been agreed upon, the contractor will proceed to reserve program funding for the project. At the same time, the homeowner will need to get pre-approved for financing in order to proceed with work;
- For each completed Whole Home Energy Solutions program job, Participating Contractor must utilize the program's software tool to report the actual measures installed, and must submit a completed test-out form, 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);
- Utilities and the Program Implementer will not approve payment for a Whole Home Energy Solutions measure customer incentive without documentation of a completed Whole Home Energy Assessment, documentation of work completed, reporting of estimated savings, required customer signoffs, and other project details as required; and
- Compliance with all Whole Home Energy Solutions program guidelines is a prerequisite for eligibility for Whole Home project incentive/financing for the customer or production incentive payment to a Participating Contractor.

## **SECTION 4 PARTICIPATION REQUIREMENTS**

Participating Contractor agrees to play an active role in the Whole Home Energy Solutions program and provide high-quality building performance services to program customers. Participating Contractors acknowledge and agree that they participate in the program at the sole discretion of Utilities and the Program Implementer and are subject to removal from the Whole Home Energy Solutions 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 requirements set forth in Sections 4.1 (Documentation Requirements) and 4.2 (Certification Requirements) below.

#### **4.1 Documentation Requirements**

Participating Contractor shall submit the following to the Utility or 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 Participating Contractor entity;
- 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 years; or that Participating Contractor is new to the industry. Participating Contractors new to the industry will be required to provide, to the satisfaction of the Utility and/or 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's plans for developing a business;
- Proof that they have at least one employee certified by BPI as an analyst or higher certification;
- Appropriate New Jersey License Number(s) (electrical, HVAC, home improvement); and
- EPA Lead-Safe Certification.

The Participating Contractor shall also:

- Ensure that the aforementioned BPI-certified technician(s) receives and continues to receive, at a minimum, training that is in compliance with all of each certification's continuing education credit requirements;
- Comply with any applicable county or municipal licensing requirements; and
- Disclose any prior and current participation in Utilities' 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 Utilities' programs, including the HVAC Efficiency program and Income Eligible Energy Efficiency program, must be provided to Utilities. This is an ongoing requirement. As such, throughout the term of this Agreement, the Participating Contractor shall notify Utilities immediately of any changes or updates to this information.

#### **4.2 Certification Requirements**

In order to participate in the Whole Home Energy Solutions program and to continue as a qualified participant, Participating Contractor shall:

- Ensure that personnel conducting Whole Home Energy 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;
- Ensure that BPI-certified personnel with the appropriate certification for the work being performed supervise all jobs performed under the Whole Home Energy Solutions program,

- whether performed by the Participating Contractor’s own employees, or by a subcontractor; and
- Provide the Utility or Program Implementer with the names and BPI certifications for staff working in this program. This is an ongoing requirement. As such, throughout the term of this Agreement:
  - Maintain BPI certification good standing;
  - Notify BPI and the Whole Home Energy Solutions program immediately should it be or become 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 Utilities or the Program Implementer for review and improvement.

**4.1 Insurance Requirements**

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

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

- The general, automobile, and excess/umbrella liability coverage held by the Participating Contractor shall name Utilities for the areas where they are operating, as well as their respective Program Implementers as additional insureds. All coverage obtained and maintained by the Participating Contractor shall be primary to and noncontributory with any and all applicable coverage held by Utilities 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 Utilities 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 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. Participating Contractor's certificate of insurance shall contain evidence that the policy or policies shall not be modified or canceled without providing at least thirty (30) calendar days' prior written notice to Utilities.

## **SECTION 5**

### **MINIMUM REQUIREMENTS FOR PARTICIPATING CONTRACTOR'S PERSONNEL**

As a condition of participating in Utilities' Whole Home Energy Solutions program, Utilities require that Participating Contractor's employees meet certain minimum standards, as outlined below. By its signature on the application, Participating Contractor confirms that is in compliance and shall remain in compliance throughout the term of this Agreement with the following minimum standards:

- Participating Contractor shall not allow any individual with a past felony conviction to perform work under the Utilities' Whole Home Energy Solutions program. Participating Contractor shall have a background investigation conducted on all of its employees who will be assigned to perform work for Participating Contractor for which the customer will seek a rebate under the Utilities' Whole Home Energy Solutions program. Participating Contractor shall require any subcontractors not under direct supervision of the Participating Contractor's employees, performing work for customers under the Utilities' Whole Home Energy Solutions 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 year prior to assignment to the Whole Home Energy Solutions program, which shall report all felony convictions within the previous seven 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.
- Utilities require that all employees of Participating Contractor who perform work under the Utilities' Whole Home Energy Solutions 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's home.

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

Contractor status and participation are subject to the agreed-upon Utility Contractor Remediation Procedures [here](#).

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

Participating Contractors who submit one or more Home Performance with ENERGY STAR program project(s) also agree to the following additional conditions:

- Participating Contractor shall perform work in a manner consistent with the Whole Home Energy Solutions program procedures, in accordance with the standards of BPI;
- Any rebate reservation submitted by a Participating Contractor must be based upon an audit that is less than one year old. A new energy audit must be performed if one year has passed. Additionally, the Participating Contractor must complete the agreed-upon work within 120 days of the rebate reservation approval. 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 Utilities and the Program Implementer, in accordance with applicable law. The requirement for confidential treatment of customer information shall survive the termination of this Agreement; provide notification within 24 hours of knowledge of a potential incident alerting Utility when confidential customer personal information is potentially exposed, or of any other potential security breach;
- Any Utility may share with any other Utility information and opinions about Participating Contractor's performance of Whole Home Energy Solutions program work and compliance with the terms of this Agreement and the program and details of any customer complaints; and
- Utilities reserve the right to make changes to the Whole Home Energy Solutions program upon notice to the Participating Contractor. Such notification shall be made 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 the Whole Home Energy Solutions program and is not acting as an agent of Utilities 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 any of the Utilities. Neither Participating Contractor nor its personnel shall have, nor represent themselves as having, any authority to approve or accept any proposal on behalf of Utilities or the Program Implementer, or make any promise,

representation, contract, or other commitment binding upon Utilities 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, 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. Utilities 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 Utilities 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 of the Utilities and the Program Implementer, as the case may be, for any amount so paid, including interest, penalties, and fines.

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

## **SECTION 9**

### **LIMITATION OF LIABILITY AND INDEMNITY**

THE UTILITIES' TOTAL LIABILITY TO PARTICIPATING CONTRACTOR FOR ALL CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, FOR ANY LOSSES (AS DEFINED ABOVE) ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OR BREACH OF THIS CONTRACT SHALL, UNDER NO CIRCUMSTANCES, EXCEED THE CONTRACT PRICE, AS MAY BE AMENDED BY AGREED-UPON PRICE FOR EXTRA WORK AUTHORIZED BY WRITTEN CHANGE ORDER. THE UTILITIES, THEIR RESPECTIVE AFFILIATES AND REPRESENTATIVES, OFFICERS, DIRECTORS, EMPLOYEES, AND SUBCONTRACTORS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES (AS DEFINED ABOVE) INCLUDING, BUT NOT LIMITED TO, DAMAGES RELATED TO SAFETY, HEALTH OR WELL-BEING, LOST OR REDUCED PROFITS, REVENUES, EFFICIENCY, PRODUCTIVITY, BONDING CAPACITY, OR BUSINESS OPPORTUNITIES, OR INCREASED OR EXTENDED OVERHEAD, OPERATING, MAINTENANCE, OR DEPRECIATION COSTS AND EXPENSES.

TO THE EXTENT THAT THIS CONTRACT INCLUDES LIQUIDATED DAMAGES, THE LIMITATION OF LIABILITY SHALL NOT APPLY TO THE LIQUIDATED DAMAGES SPECIFIED THEREIN, AND THE PAYMENT OF LIQUIDATED DAMAGES SHALL NOT EXCUSE CONTRACTOR'S FAILURE TO PERFORM OR BREACH OF THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT: (i) THE UTILITIES WILL SUFFER SIGNIFICANT DAMAGES AND SUBSTANTIAL FINANCIAL LOSS IF THE SCHEDULE GUARANTEES OR PERFORMANCE GUARANTEES, TO THE EXTENT APPLICABLE, ARE NOT MET AND SUCH DAMAGES AND FINANCIAL LOSSES WOULD BE VERY DIFFICULT TO CALCULATE; AND (ii) THE LIQUIDATED DAMAGES SPECIFIED IN THE CONTRACT ARE FAIR AND REASONABLE, IN LIEU OF ACTUAL DAMAGES, ARE NOT PENALTIES, AND REFLECT THE PARTIES' GOOD FAITH ASSESSMENT AND ESTIMATE OF THE DAMAGES AND FINANCIAL LOSSES REFERRED TO ABOVE. THE LIQUIDATED DAMAGES SPECIFIED HEREIN ARE THE UTILITIES' EXCLUSIVE FINANCIAL REMEDY FOR FAILURE TO ACHIEVE SCHEDULE OR PERFORMANCE GUARANTEES, BUT DO NOT PREVENT THE UTILITIES FROM EXERCISING ITS OTHER RIGHTS AND REMEDIES UNDER THE CONTRACT INCLUDING THE UTILITIES' RIGHTS IN THE EVENT OF TERMINATION.

To the fullest extent permitted by law or regulation, Contractor shall defend, indemnify, and hold harmless each of the Utilities and any subsidiaries or affiliates thereof, their respective directors, officers, employees, agents, representatives, and program implementers ("Indemnitees") from and against any and all liabilities, losses, claims, damages, fines, penalties, costs, expenses (including reasonable attorney's fees), demands, and causes of actions of every kind or character ("Losses") arising, or alleged to have arisen, out of any claims (just or unjust) relating to: personal injury, including death to any employee or other person; damage or injury to property, including loss of use; or a breach or incident to the performance of this Contract and/or the acts or omissions of the Contractor, its employees, and/or subcontractors. Notwithstanding the foregoing, Contractor's obligations under this section shall not extend to losses that are the direct result of a fully adjudicated finding of negligence or intentional misconduct of an Indemnitee.

### **Warranties**

Contractor warrants that all work provided by Contractor or its subcontractors shall: (i) be of high quality; (ii) be free from any defects; (iii) be suitable for the purposes for which it was intended; (iv) be properly installed; (v) result in dependable service and performance as specified in, or that may reasonably be inferred from, the Contract documents; (vi) comply with established industry codes and standards; (vii) comply with sound industry and work practices; (viii) comply with all laws; (ix) not violate any intellectual property right or other proprietary interest; and (x) otherwise fully conform in all respects to the Contract documents.

Unless otherwise specified in the Contract, Contractor also warrants that all material provided hereunder, including all components incorporated into the work, shall be new and free from any liens, encumbrances, security interests, and defects in title.

Contractor warrants that any system(s) provided as part of the work (including, but not limited to, heating, wiring, piping, cooling, plumbing, electrical, control, lighting, alarm, or computer systems) shall operate properly and dependably and be compatible with other existing or connecting systems. Contractor warrants that any material provided as part of such system(s) shall be compatible with the system(s) and its components.

During the progress of the work, Contractor shall, at its sole cost and expense, promptly repair, replace, or reperform any work, including material, in whole or in part, that is rejected by the Utilities as failing to conform to the Contract. Contractor shall also bear all expenses required to fix any work of the Utilities or other contractors that is impaired, destroyed, or damaged by such nonconforming work or the repair, replacement, or reperformance of such nonconforming work.

For one year from the date that work has been accepted by the Utilities, or the date that work has been placed into commercial use, whichever is later (the "Warranty Period"), Contractor warrants that it will promptly repair, correct, replace, and reperform any said work that fails to conform to the Contract at no additional cost to the Utilities. All such warranty work shall be performed on a schedule acceptable to the Utilities and shall be warranted for one additional full year from the date of repair, correction, replacement, or reperformance of such work, which one additional year shall be considered the Warranty Period. The Utilities' acceptance of said work or placement of such work into commercial use, or final payment therefor, shall not relieve Contractor of its responsibility to provide conforming work.

Written communication to Contractor specifying defective or otherwise nonconforming work that appears either during the progress of the work or during the Warranty Period after acceptance of the completed work for use or operation shall be deemed sufficient notice to Contractor to promptly remedy the defect or nonconformity as required by this Contract.

If repair, correction, replacement, or reperformance of defective or otherwise nonconforming work by Contractor would, in the Utilities' opinion, be impracticable or disadvantageous to the Utilities, the Utilities shall be entitled to a full refund of the price paid by the Utilities for such defective or nonconforming work.

The liability of Contractor shall extend to all of Utilities' damages caused by the breach of any of the foregoing warranties and shall include, but not be limited to, the cost of removal and replacement of nonconforming material, shipping of material, correction of work, Utilities' labor expenses resulting from the breach of the warranty, and the cost of removal and reinstallation of other material or work made necessary thereby.

Contractor shall identify in writing all third-party or original equipment manufacturer warranties that Contractor receives in connection with the work and will pass through to the customer the benefits of all such warranties (the "Pass-Through Warranties"); provided, however, that nothing in this section will reduce, limit, or expand Contractor's obligations under this Contract.

**SECTION 10**  
**TERM AND TERMINATION**

Regardless of the execution date, this Agreement will expire on June 30, 2027, unless otherwise extended in writing by the Parties or terminated earlier by a Utility for cause or convenience.

Utilities may at any time terminate this Agreement or the subject Whole Home Energy Solutions program in whole or, from time to time, in part for the convenience of any Utility or Utilities 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 a Utility may have against Participating Contractor.

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

- The Utilities reserve all ownership rights in any of the Utilities' or their affiliate trademarks, service marks, and intellectual property. Except as expressly provided in this Agreement, Utilities do not transfer or license any trademark or other intellectual property right to Participating Contractor.
- Any use by Participating Contractor of Utilities or Utilities' affiliate trademarks, service marks, and intellectual property is subject to the prior written consent of each Utility. 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 Utility or Utility's 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 any Utility or Utility's affiliate trademarks, service marks, and intellectual property.
- For purposes of this Agreement, Utility or Utility's affiliate trademarks, service marks, and intellectual property shall include any trademarks, service marks, names, logos, and designs of any Utility and its affiliates (including the Whole Home Energy Solutions program marketing materials) that are now or hereafter owned, claimed, adopted, acquired, or used by Utilities or any of their 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 New Jersey.

**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 the Utilities.

**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 any Utility 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 such Utility or any other Utility 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 submitted via electronic delivery (email) to the address provided herein by the Utility or Program Implementer, and by the Participating Contractor, or at such other addresses as may be specified in writing. Participating Contractor will also have the obligation to notify all Utilities where they are performing work within the Whole Home Energy Solutions program.

**CLEAResult**

175 Campus Dr., Edison, NJ 08837  
acewheshelp@clearresult.com

Copy to:

**CLEAResult**

100 SW Main Street, Suite 1500  
Portland, OR 97204

**Attention: Legal Department**

**SECTION 19**

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 20**  
**AGREEMENT**

**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 New Jersey State Department of Labor, Licensing, and Regulation or a pattern of outstanding litigation that involves the work of Participating Contractor or of any of Participating Contractor's principals;
- 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, understands, and agrees to all of the definitions, terms, and conditions that are a part of this Agreement; and
- Participating Contractor acknowledges that failure to follow Whole Home Energy Solutions program requirements and procedures, including submitting necessary documents, will jeopardize Participating Contractor's ability to receive incentives under the Whole Home Energy Solutions program.

\*New Jersey-based company requirement is defined as: Contractor maintains an office or fixed facility in any underserved New Jersey urban center from which the management and operational activities relating to the work will be conducted and which will function as the principal work location for its employees performing work, and the full-time dedicated employees of Contractor performing the work are New Jersey residents, meaning that such full-time dedicated employees maintain a permanent residence within the state of New Jersey, except small businesses as defined by the U.S. Small Business Administration may have an office or fixed facility in any New Jersey city. Definition of a small business can be found at [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

*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 the Utility or Utilities by Participating Contractor to release to Utilities any information pertaining to past or present relevant work. I hereby release from all liability or damage the Utilities and those persons, agencies, or organizations who may furnish such information.*

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

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

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

### **20.1 Required Documentation**

Please upload the following documentation to complete application for participation:

1. Applicable New Jersey licenses
2. Copy of EPA lead-safe certification
3. Certificate(s) of Insurance for all utilities and Program Implementers (may also be emailed by insurance companies to the address below)
4. Copy of Diverse Supplier Certificate (if applicable)
5. Signed copy of this Contractor Participation Agreement
6. Proof of BPI certification

Electronic submission of Certificate(s) of Insurance must be sent to the following address:

**ACErebates@CLEAResult.com**