

Contractor Participation Agreement

Illinois OBF

This Agreement ("Agreement") is made this _____ (Date) between Energy Finance Solutions ("EFS"), a division of Slipstream Group, Inc., a Wisconsin not-for-profit corporation, and _____ ("OBF Contractor"), a _____ Corporation.

WHEREAS, OBF Contractor engages in the sale and installation of energy-related improvement goods and services ("Products and Services");

WHEREAS, Contractor 1) desires to be authorized to provide such Products and Services to its customers as an "Approved OBF Contractor" under programs offered and/or administered by EFS; and/or 2) desires to be authorized to perform work financed by loans made directly to its customers by EFS or originated by EFS on behalf of other lenders;

WHEREAS, EFS is in the business of making direct loans to consumers for energy-related improvements in certain states where its licensing or exemptions permits such lending, and originating commercial loans;

WHEREAS, loans described in this Agreement may be payable by consumers through an on-bill financing program (the "OBF Program") offered by a utility doing business in Illinois ("Utility") pursuant to 220 ILCS 5/16-111.7 and/or 220 ILCS 5/19-140 and orders of the Illinois Commerce Commission; and

NOW THEREFORE, in consideration of the foregoing and the mutual promises, covenants, and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OBF Contractor and EFS agree as follows:

1. **Representations and Warranties of OBF Contractor.** OBF Contractor represents, warrants and covenants to EFS that:
 - a. At all times during the term of this Agreement, OBF Contractor shall be and remain duly licensed, authorized to conduct business, and in good standing in all states in which it conducts business, and shall have the legal authority and power to offer, sell and/or install its Products and Services.
 - b. OBF Contractor will not represent itself as an agent or employee of EFS, Utility or any governmental agency, lender, association or company involved in EFS' programs, and will use the OBF Program or other EFS program names and logos and the names and logos of any governmental agency, lender, association or company involved only as expressly permitted by EFS; provided, however, that the names and logos of Utility shall only be used in the form and manner expressly permitted by Utility, and all advertising referencing the Utility or the Utility's Energy Efficiency Program(s) must be in compliance with all published Utility branding guidelines.
 - c. With regard to any sale or installation of Products and Services, OBF Contractor has complied and will comply with all applicable laws and regulations in the solicitation of the sale, installation and financing of its Products and Services, including the Illinois and FTC "Cooling Off Rule".
 - d. The Products and Services will be duly delivered and installed by OBF Contractor in a good and workmanlike manner, accepted by the customer in good and habitable condition and working order, shall conform with all warranties, express or implied, representations, legal obligations and local, state and federal requirements and codes concerning the condition,

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construction, and placement of the eligible improvements, and upon receipt of notice from EFS and/or customer to correct any defective work and/or to replace payment authorization and to also assign all longer contractor and material warranties to the homeowner.

- e. OBF Contractor will provide any and all labor, resources, and quantity (ies) of materials and products necessary to complete the job as specified in OBF Contractor's bid, at no additional required out of pocket cost to the customer. OBF Contractor is responsible for the costs of any and all indemnification, staffing, resources, products, and materials that are incurred by the customer as a result of the work performed under the contract between OBF Contractor and the customer and are not specifically itemized on the bid and/or change order.
 - f. OBF Contractor will assign only trained, qualified, certified and licensed (where applicable) personnel to perform work. All work will be completed in a timely and professional manner that meets or exceeds currently accepted performance standards of the industry.
 - g. OBF Contractor will visit the site and warrant that all work, materials, and Products and Services provided under this Agreement have been performed as specified given the existing conditions of the site. This warranty will be provided in writing to the customer and will provide that all work performed under the contract between the OBF Contractor and customer will be free from defects in materials and workmanship.
 - h. No subcontractors will perform any of the proposed work unless they are explicitly specified in the original bid. Each subcontractor must be certified to perform such work under Illinois Commerce Commission Certified Energy Efficiency Measures Installer rules if required by the applicable Utility. OBF Contractor shall be responsible for any installations and work performed by any subcontractors.
 - i. The construction contract or services agreement arises from the bona fide sale of the products and services described in the construction contract or services agreement underlying the loan to a bona fide borrower or customer, and OBF Contractor has not engaged in fraud, misrepresentations or deceptive practices.
 - j. No part of any down payment has been provided directly or indirectly by OBF Contractor, or to the best of OBF Contractor's knowledge, by any other person; any dealer protection plan may not be financed, but may be sold in conjunction with the sale or installation of Products and Services, and will be in writing and in compliance with all applicable laws;
 - k. OBF Contractor shall honor all warranty or service agreements of OBF Contractor or manufacturer with any customer.
 - l. EFS, Utility, or third party implementer on EFS' or the Utility's behalf may inspect OBF Contractor's records to determine compliance with this Agreement.
2. **Breach of Representations and Warranties.** In the event that OBF Contractor breaches any of the warranties and/or representations herein, OBF Contractor shall indemnify, defend and hold harmless EFS and Utility for, from and against any and all claims, actions, causes of action, liabilities, damages, losses, and costs (including, without limitation, litigation-related costs and expenses and reasonable attorneys' fees) which result directly or indirectly from such breach. Pursuant to 16 C.F.R. 433 et seq., Preservation of Borrower's Claims and Defenses, the term "losses" as used herein include (i) any amounts recovered by customer from EFS or Utility, (ii) any unpaid balance of the amount financed; and (iii) any unpaid finance charges that are not paid by the customer to EFS due to such breach by OBF Contractor.

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3. **OBF Contractor Reporting Requirements.** OBF Contractor agrees to meet and maintain the following requirements:
 - a. Tangible net worth of at least \$50,000 that may be demonstrated with financial statements;
 - b. Better Business Bureau report confirming satisfactory standing;
 - c. Trade or OBF Contractor licenses or permits required by law to perform installations;
 - d. Certified under Illinois Commerce Commission Certified Energy Efficiency Measures Installer rules if required by the Utility;
 - e. BPI, RESNET or IGSPHA certification when required by the energy efficiency program offering; and
 - f. Liability and Workmen's Compensation Insurance Policies showing a minimum of \$500,000 in coverage.
4. **Payment of Proceeds.** The agreed-upon proceeds of each direct loan made to customers with regards to Products or Services for sale and installation hereunder will be payable by EFS to OBF Contractor upon satisfaction of each of the following conditions: (i) as applicable, delivery of direct loan documents returned by customers and completion of EFS quality check of these documents; (ii) delivery of a completion certificate to EFS by OBF Contractor, on a form supplied by EFS and signed and dated by OBF Contractor and the customer, confirming that the work has been completed and is satisfactory and authorizing payment to OBF Contractor; (iii) at the discretion of the Utility, a telephone audit by EFS; (iv) compliance with all applicable terms of this Agreement and all federal, state and local laws and regulations applicable to the transactions set forth herein; (v) to the extent the loan is part of an OBF Program, the customer must be an eligible customer of Utility ("Eligible Customer") pursuant to the Utility's eligibility standards as determined by Utility in its sole discretion, at the time the proceeds of the customer's loan are payable by EFS to OBF Contractor. OBF Contractor acknowledges that it bears the risk that the customer is not an eligible customer under Utility's OBF Program at such time, and the customer shall therefore be ineligible for the loan. Neither EFS nor Utility shall have any liability to OBF Contractor if EFS makes no payment to OBF Contractor because the customer is not an eligible customer even though the customer was an eligible customer under Utility programs at any time prior to the actual date the proceeds may otherwise be due OBF Contractor; and (vi) OBF Contractor further acknowledges that only certain improvements are eligible for loans through EFS and that it is OBF Contractor's obligation to confirm with EFS that an improvement is eligible for such a loan.

OBF Contractor warrants and represents that the execution, delivery and performance by OBF Contractor of this Agreement, and of each of the documents contemplated hereunder which are required to be executed and delivered by OBF Contractor on an ongoing basis, does not and will not: (i) violate any of the provisions of OBF Contractor's governing documents; (ii) violate any provision of any law in effect which is applicable to OBF Contractor, the customer loan agreement, the work contract, or any security interest; (iii) require compliance with the notice procedures of any state's bulk transfer laws; (iv) violate any judgment, decree, writ, injunction, award, determination or order currently in effect applicable to OBF Contractor or its properties or by which OBF Contractor or its properties is or are bound or affected; (v) conflict with, or result in a breach of, or constitute a default under, any of the provisions of any indenture, mortgage, deed of trust, contract or other instrument to which OBF Contractor is a party or by which it or its properties is or are bound; or (vi) result in the creation or

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imposition of any lien upon any of the properties of OBF Contractor pursuant to the terms of any such indenture, mortgage, deed of trust or instrument.

5. **Breach and Termination.** In the event of a breach of any representation, warranty or covenant of OBF Contractor, any claim by a customer based upon allegations of fact which if found to be true would constitute a breach of OBF Contractor's warranties herein or if OBF Contractor or EFS is named as a defendant or responding party in any administrative, regulatory, or judicial proceeding or complaint based upon allegations of fact which if found to be true would constitute a breach of OBF Contractor's warranties or representations herein, OBF Contractor shall: (a) at EFS' request, immediately refund the funded loan amount for such account, plus accrued interest at the loan rate, plus expenses, less actual payments received by EFS after funding and said refunding is without any recourse against EFS or Utility; and (b) on demand, hold EFS, Utility, its and their respective parent, subsidiaries, affiliates, lenders, successors and assigns and their respective officers, employees, agents and directors free and harmless from any resulting claims, losses, costs, damages, punitive damages, penalties, any return, forgiveness or cancellation of all or any part of the principal or interest paid or payable on any account, any attorney fees, legal fees or expenses imposed or sought to be imposed upon it, however denominated, and, at EFS' option, forthwith enter and defend EFS and/or Utility at OBF Contractor's sole expense in any judicial, administrative, or regulatory proceedings using counsel selected by EFS in the case of EFS or Utility in the case of Utility. Either party may terminate this Agreement in writing at any time and for any reason by thirty (30) days written notice of termination. However, even if this Agreement is terminated as to future Products and Services with loan funding, this Agreement shall remain in effect with regard Products and Services that were previously installed by OBF Contractor under the terms of this Agreement and are associated with loans originated by EFS. Termination of this Agreement does not release OBF Contractor from any of its responsibilities or liabilities related to specific Products and Services that were previously installed under the terms of this Agreement and were associated with loans originated by EFS to customers before the termination, unless EFS expressly agrees in writing to release OBF Contractor from these responsibilities or liabilities.
6. **Notices.** All notices between the parties shall be in writing and shall be sent by email, addressed to the email address set forth below, (except that EFS may notify OBF Contractor of changes in its programs and procedures from time to time orally, by FAX, by mail, by hand delivery, or by whatever means EFS in its sole discretion deems appropriate), or to such other address as may be specified by written notices delivered in accordance herewith.

EFS
EFS, a division of Slipstream Group, Inc.
EFS@EnergyFinanceSolutions.com
431 Catalyst Way Madison, WI 53719

OBF Contractor

7. **Amendment.** This Agreement may be amended or modified by the parties from time to time, but only by written agreement executed by both parties. EFS shall be required to obtain the written consent of all Utilities participating under the OBF Program before agreeing to such amendment or modification.

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8. **Governing Law.** This Agreement has been executed in and shall be governed by the laws of the State of Illinois.
9. **Assignment.** The rights and obligations under this Agreement shall not be assigned by OBF Contractor, except with the prior written consent of EFS, which consent shall not be unreasonably withheld. EFS, however, may sell or assign all or any part of its rights hereunder without the consent of OBF Contractor.
10. **Entire Agreement.** The terms contained herein constitute the entire agreement of the parties with respect to the matters herein. Any representations or agreements that may have been made by any party prior to the execution of this Agreement with respect to such matters are void, and neither of the parties has relied on such prior representation in executing this Agreement. The recitals set forth above are included herein as if set forth in full. If any one or more of the provisions contained in this Agreement for any reason are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
11. **Third Party Beneficiary.** To the extent any loans described in this Agreement are payable through the OBF Program, Utility shall be a third party beneficiary of this Agreement. Without limiting the foregoing, the following shall inure to the benefit of Utility: (i) any representation or warranty made in this Agreement by OBF Contractor to EFS, (ii) OBF Contractor's indemnification obligations under Sections 2 and 5(b) of this Agreement, and (iii) Utility's approval and inspection rights under Sections 1(b) and 1(l) of this Agreement. As a third party beneficiary, Utility may enforce the provisions of this Agreement against OBF Contractor as if a party to this Agreement. Nothing in this provision shall be construed as treating EFS and Utility as partners or agents of each other or Utility as a lender, and OBF Contractor acknowledges that EFS and Utility are not partners or agents of each other and that Utility is not a lender.

IN WITNESS WHEREOF, the duly authorized representatives of each of the parties hereto have hereunto set their hands and seals as of the date and year first above written.

EFS
Signature:
Print Name:
Title:

OBF Contractor
Signature:
Print Name:
Title: