

Dynamic Load Management Program Agreement

(Vintage Year 2027)

Part I: Introduction and Participant Eligibility

Participant Eligibility This Dynamic Load Management Program Agreement (as amended and in effect from time to time, this "Agreement" or the "Program Agreement") is made and entered into between (1) Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") and either of (2) a Con Edison electric account holder or customer ("Customer") eligible to participate in the Company's Dynamic Load Management (DLM) Program (hereinafter, "Program" or the "DLM Program" and as more particularly defined by the DEFINITIONS section of Part III of this Agreement) or (3) an approved aggregator ("Aggregator" and as more particularly defined by the DEFINITIONS section below) eligible to participate in the DLM Program. Con Edison will determine Program eligibility at Con Edison's sole discretion based on Con Edison's review process, including, in the case of Aggregator eligibility, as more particularly set forth as part of the Request for Proposal (RFP) related to the DLM Program, which RFP is incorporated herein by this reference as to the obligations of Applicant referenced hereunder. Among other things, an Aggregator aggregates the load of Customers who collectively have a Load Relief potential of 50 kW or greater and is responsible for the performance of such Customers. The party whose details are reflected by Part II of this Agreement and on whose behalf this Agreement is accepted and signed by an authorized representative is referred to herein as "Applicant" (and also as defined by the DEFINITIONS section below) and may be a Customer, or an approved Aggregator, or a third party on behalf of a Customer or Aggregator, and all undertakings under this Agreement by Applicant shall in all instances be the undertakings by Applicant on behalf of itself and any necessary third party, including Customers and Aggregators, as applicable. For clarity, this Agreement includes this Part I: Introduction and Participant Eligibility, Part II: Contract Scope and General Information, Part III: Terms and Conditions; and all attachments, addenda and amendments hereto referenced hereunder or that reference this Agreement and are signed by the parties hereto, including Addendum I: DLM Applicant Information and Listing of Cleared Aggregations (Vintage Year 2027) ("Addendum I") hereto. Terms used as defined terms are as defined herein, including as provided for by the DEFINITIONS section of Part III of this Agreement.

Part II: Contract Scope and General Information

DLM Program Information

The DLM Programs are regulated and structured in compliance with Rider AC under the Con Edison Electric Tariff and Public Service Commission directives. Entering into this Agreement ensures compliance with all regulations and program requirements. **Applicant acknowledges and agrees that participation in the Program requires full compliance with all applicable PSC directives, tariffs, and regulatory requirements, and Applicant shall be responsible for ensuring such compliance by itself and any Customers or Aggregations enrolled under this Agreement.**

The parameters of Applicant's proposal accepted by Con Edison for Applicant to participate in the DLM Program pursuant to this Agreement are set forth with particularity as part of Addendum I, which is attached hereto and incorporated herein by this reference. Applicant may aggregate Customer building sites in order to deliver to Con Edison the contracted for Load Relief. The Aggregations referred to by Addendum I are intended to meet the requirements of the Program and shall be eligible for Program incentives only if the Aggregations meet the requirements of the Program, and as more particularly set forth by the terms and conditions of this Agreement.

In general, with regard to Term-DLM, Applicant commits to a contract for a term of three to five years, which specific duration is more particularly provided for by Addendum I, to provide a quantity of Load Relief for a minimum of four hours in predetermined Call Windows on certain days during the Capability Period when the Company's day-ahead system peak electric load is expected to be high. With regard to Auto-DLM, Applicant commits to a contract for a term of three to five years to provide a quantity of Load Relief on days when the Company calls the Term-DLM as well as during electric system contingencies.



Applicant Information

Applicant may be an Aggregator or a Customer (or a third party authorized on behalf of an Aggregator or a Customer). Whether the Applicant is an Aggregator or a Customer (on its own behalf or by an authorized third party), information for the Applicant is required immediately below.

Applicant Company Name

Contact Name		Day Phone
Applicant Address		Email
Address 2		Fax
City	State	Zip Code

Federal Tax ID

Check appropriate box:

<input type="checkbox"/> Individual/Sole Proprietor	<input type="checkbox"/> Corporation	<input type="checkbox"/> Exempt Payee (Provide Tax Documentation)
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Other	<input type="checkbox"/> Partnership

Payee Mailing Address Information

Any incentive payments should be sent to:

Attention

Payee Name

Mailing Address

City	State	Zip Code
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Part III: Terms and Conditions

I. DEFINITIONS

a. Auto-DLM

Means a DLM Program established under a contract for three to five years (duration as more particularly set forth by Addendum I) between Applicant and Con Edison for Applicant to provide a quantity of Load Relief for a contingency program activated to prevent or mitigate critical situations on Con Edison's electric grid or for peak shaving purposes using the same activation criteria as for Term-DLM; and a contingency may be designated under Auto-DLM in specific networks, feeders, or geographical areas if the next contingency would result in a "Condition Yellow" (i.e., when the next contingency, excluding breaker failure, either will result in an outage to more than 15,000 customers or will result in some equipment being loaded above emergency ratings) or if a voltage reduction of five percent (5%) or greater has been ordered.

b. Adjusted Performance Factor

Means a calculation for each Event using the Event Performance Factor and reducing the value based on a formula provided for by the Program rules, and as more particularly provided for by the "Calculation of Adjusted Performance Factor" section of the RFP.

c. Advisory

Refers to the Company's notice, which can be sent, when the day-ahead forecasted load level is at least eighty-eight percent (88%) of forecasted summer system peak.

d. Aggregation

Means either a Sub-aggregation or all Customers represented by an Applicant within a Network if there are no Sub-aggregations for that Aggregator within that Network.

e. Aggregator

Refers to a party other than the Company that represents and aggregates the load of Customers who collectively have a Load Relief potential of 50 kW or greater under Term-DLM or Auto-DLM for a particular Vintage Year and that is responsible for the actions of the Customers aggregated, including performance under the Program, and, as applicable, repayments to the Company.

f. AMI Meter

Means an Advanced Metering Infrastructure equipped meter setup, which aids in two-way communication between the Company and Customers.

g. Applicant

Means an eligible individual and/or entity entering into a contract with Con Edison, whether a Customer (or third party acting on a Customer's behalf) or Aggregator, and all undertakings under this Agreement by Applicant shall in all instances be the undertakings by Applicant on behalf of itself and any necessary third party, including Customers and Aggregations, as the case might be, whether or not specifically mentioned.

h. Average Season Performance Factor

Means the average value of all Adjusted Performance Factors calculated for an Aggregation during a Capability Period.

i. Baseline Verification Methodology

Refers to how performance will be evaluated by measuring how much Load Relief an Aggregation provides compared to how much was committed. The Baseline Verification Methodology will be used by the Company to verify the actual Load Relief provided (measured in kW and kWh) during each hour of each designated Load Relief Period and Test Event. Actual load levels are compared to the Customer Baseline Load (CBL) to verify whether Applicant provided the kW of contracted Load Relief; provided, however, that the Company may estimate data if data is not available for some or all intervals required.

j. Call Window (or Contracted Hours)

Refers to the period (a minimum of four hours) within a weekday, Monday through Friday during the Capability Period, excluding federal holidays, during which Applicant contracts to provide Load Relief in a Network whenever the Company designates a Term-DLM Event. Contracted Hours are established by the Company for each Network based on individual Network needs and will be posted on the Company's website no later than January 1 for the upcoming Capability Period, and as may be amended by the Company and noticed to Applicant in certain instances with reasonable notice, including within ten calendar days of enrollment.

k. Capability Period

Refers to May 1st through September 30th of any calendar year during the term of the Program Agreement,

I. Cleared Quantity

Means the initial amount of Load Relief, measured in kW, awarded to an Applicant and that will be associated with an Aggregation.

m. Contracted Hours (or Call Window)

Refers to the period (a minimum of four hours) within a weekday, Monday through Friday during the Capability Period, excluding federal holidays, during which Applicant contracts to provide Load Relief in a Network whenever the Company designates a Term-DLM Event.

n. Curtailment

Refers to the provision of Load Relief without use of Electric Generating Equipment or Energy Storage Systems (ESS) (which, for clarity, refers to storage technologies that have the ability to store energy and discharge electricity).

o. Customer

Means an individual Con Edison electricity account holder. All performance under this Agreement is calculated at an account level rather than at a meter level.

p. Customer Baseline Load (CBL)

Means the baseline load for a Customer as calculated under the Company's Customer Baseline Load methodology using the baseline options listed in the methodology, and as the Customer Baseline Load methodology is described more particularly by the Company's baseline operating procedure published on the [Company's website](#). Actual load levels are compared to the Customer Baseline Load to verify whether Applicant provides the kW of contracted Load Relief, which is done by the use of the Customer Baseline Load in the calculation of Baseline Verification Methodology.

q. Deficient Quantity

Means the portion of the Cleared Quantity, measured in kW, that Applicant requests to be relieved of as a reduction to Applicant's commitment to Load Relief contracted for by Applicant, which must be done on or prior to November 1st of the calendar year prior to a Capability Period, and for which an Early Exit Fee shall be paid.

r. DR Portal

Means the Company's customer management platform that Applicant can use to enroll Customers electronically in the DLM Program, and that is available to Applicant upon completion of the Company's enrollment process, which serves as an important focal point for Applicant's engagement with the DLM Program, including to receive notification of Events, track Event performance by Aggregation, and view payment information related to participation in the Program.

s. Dynamic Load Management (DLM) Program

Means the program or programs ordered by the New York State Public Service Commission to be run by utilities with the aim of addressing distribution level grid conditions during times of acute need, which are more particularly established hereunder as the Company's Term-DLM and Auto-DLM programs.

t. Early Exit Fee

Refers to a fee paid to the Company prior to the beginning of a Capability Period to reduce the amount of Portfolio Quantity associated with an Aggregation for the remaining duration of the contract (as provided for by Section IX of this Agreement) as relates to the reduction, which is calculated as the product of the Deficient Quantity, multiplied by the Incentive Rate, multiplied

by ten percent (10%), multiplied by the remaining full Capability Periods of the contract (keeping in mind that notice of a Deficient Quantity must be provided prior to November 1st of the calendar year prior to a Capability Period). At times, the Early Exit Fee calculation may also be utilized as a calculation to calculate the penalty to be assessed against Applicant for Applicant's failure to meet Applicant's Load Relief obligations, and as more particularly set forth under this Agreement. The dollar amount of the Early Exit Fee owed to Con Edison by Applicant may be satisfied (as an offset) by Con Edison from any future incentive payments due to be paid by Con Edison to Applicant.

u. Electric Generating Equipment

Refers to: (a) electric generating equipment at the premises of a Customer used to provide Load Relief; or (b) emergency electric generating equipment that is interconnected and used to provide Load Relief.

v. Event

Refers to an instance where the Company requests Load Relief to be provided by Applicant under the DLM Program, and in accordance with the terms and conditions of this Program Agreement.

w. Event Performance Factor

Means the ratio between the Load Relief provided by an Aggregation during an Event and the Aggregation's Portfolio Quantity, and as the Event Performance Factor is more particularly discussed in the RFP.

x. Incentive Rate

Means the dollar per kW per Capability Period applicable to each Aggregation established in the first instance by Applicant based on the responsive bid to the RFP by Applicant.

y. Interval Meter

Refers to a meter with telecommunications capability that records electric usage in increments of 15 minutes or less, and which includes upgraded meters installed under the Company's AMI Meter program.

z. Load Relief

Refers to power (kW) and energy (kWh): (a) ordinarily supplied by the Company that is displaced by use of Electric Generating Equipment and/or reduced by Applicant at the Customer's premises; or (b) produced by use of Electric Generating Equipment by a Customer consistent with regulatory requirements; and, in both instances, delivered by a Customer to the Company's distribution system during a Load Relief Period.

aa. Load Relief Period

Refers to the hours for which the Company requests Load Relief in a Network with respect to a Term-DLM Event or an Auto-DLM Event, as the case might be; and, provided, however, that the Company will not request Load Relief in a Network with respect to an Auto-DLM Event between the hours of 12:00 AM and 8:00 AM.

bb. Network

Refers to a distribution network or load area of the Company's utility service area designated by the Company as such.

cc. Performance Payment

Refers to payments made to Applicant based on the kWh of Load Relief provided by an Aggregation during a Term-DLM or Auto-DLM Event, which will be calculated at a dollar amount equal to \$1/kWh multiplied by the average hourly kWh of Load Relief provided by an Aggregation during an Event multiplied by the number of Event hours. For Test Events, the kWh of Load Relief used to calculate Performance Payments will not exceed the product of the Aggregation's Portfolio Quantity and the length of the Test Event. (As more particularly provided for by Section XII hereof, Performance Payments will not be made under Term-DLM or Auto-DLM if service is taken as part of a Con Edison "Rider R Tariff" program).

dd. Portfolio Quantity

Means the Cleared Quantity less any Deficient Quantity associated with the payment of an Early Exit Fee for each Aggregation.

ee. Project

Refers to any total of Aggregations and Sub-aggregations reflecting the means of Applicant satisfying Applicant's Load Relief obligation under the Program Agreement.

ff. Renewable Generation

Refers to behind-the-meter electric generating equipment that is not fossil-fueled and has no emissions associated with it (which includes Energy Storage Systems because such systems do not emit pollutants at their source).

gg. Reservation Payment

Means any payment made to Applicant at the conclusion of each Capability Period based on an Aggregation's Portfolio Quantity, its Incentive Rate, and its Average Season Performance Factor, which will be calculated, by Aggregation, at a dollar amount equal to the applicable Incentive Rate per kW per Capability Period multiplied by Applicant's Portfolio Quantity multiplied by Applicant's Average Season Performance Factor.

hh. Sub-aggregation

Refers to a subset of Customers represented by an Aggregator within a Network. An Aggregator may have up to three Sub-aggregations per Network, per Vintage Year, with the limit of three applying separately to each of Term-DLM and Auto-DLM, as long as each Sub-aggregation contains Customers who collectively have a Load Relief potential of 50kW or greater in the Network. An Aggregator may create Sub-aggregations as specified in the Program Agreement for a given year.

ii. Term-DLM

Means a DLM Program established under a contract for three to five years (duration as more particularly set forth by Addendum I) between Applicant and Con Edison for Applicant to provide Network peak shaving during Contracted Hours when the day-ahead system electric load forecast reaches at least eighty-eight percent (88%) of its forecasted summer system peak.

jj. Test Event

Refers to the Company's request under either Term-DLM or Auto-DLM for Applicant to provide Load Relief for one hour in order to test Applicant's response to a request for Load Relief.

kk. Vintage Year

Refers to the first Capability Period hereunder during which Applicant is contractually obligated to provide Load Relief by participating in the DLM Program.

II. ELIGIBILITY

Unless otherwise approved by the Company, incentives are available only for Aggregations that provide the Load Relief contracted for by Applicant to provide to Con Edison. The amount of Load Relief delivered during an Event is determined by the Baseline Verification Methodology and is satisfied by a satisfactory response to the calling of a Term-DLM or Auto-DLM Event by Con Edison. A single CBL verification methodology will be used by the Company for each Customer account to assess both energy (kWh) and demand (kW) Load Relief. Customers using generators to provide Load Relief cannot be enrolled under a CBL verification methodology that includes a weather adjustment. An Applicant may change the CBL verification methodology or kW of pledged Load Relief for the upcoming Capability Period during each enrollment period by the Enrollment Deadline (as hereinafter defined as part of Section V hereof). Applicant certifies that Customers are aware of the responsibility for tracking the hours of use or amount of emissions in connection with the use of electric generation in Demand Response programs to ensure participation in tests and/or events, and that Customers are and will be in compliance with all permitted limits on hours of use or amount of emissions. In addition, Applicant certifies that Customer use of generators meets all federal, state, and local regulations, as well as permitted use conditions. Applicant will receive incentives contemplated by this Agreement or incur penalties based on the relation between the Aggregation's provided Load Relief and the Aggregation's Load Relief obligation during the calling of a Term-DLM or Auto-DLM Event by Con Edison.

Customers served under Grandfathered Net Metering and Phase One Net Energy Metering (NEM) under Rider R are ineligible to participate in Rider AC programs, including Term-DLM and Auto-DLM. This restriction is required under the Company's electric tariff and PSC directives to avoid conflicts with the financial structure of Demand Response programs and to maintain baseline integrity and program performance standards. Aggregators must ensure that no Customer enrolled in their portfolio is served under Rider R's Grandfathered or Phase One NEM provisions.

III. TECHNOLOGY RESTRICTIONS

There are technology restrictions applicable to participation by Applicant in the DLM Program, which have been noticed previously to Applicant by Con Edison by the RFP, and as more particularly set forth therein. Among other things, Diesel-fired Electric Generating Equipment will not be permitted as part of the DLM Program, and if used will be grounds for cancelling the

contract related to the Aggregation. In addition, Electric Generating Equipment is prohibited from operating under the DLM Program within one-half mile of a peaking generator located at Gowanus (Brooklyn), Narrows (Brooklyn), Hudson Avenue (Brooklyn), Astoria (Queens), 59th Street (Manhattan, West Side) and 74th Street (Manhattan, East Side), all as shown on the Company's website, but excluding as may be applicable to Renewable Generation.

If Applicant wants to operate Electric Generating Equipment for Load Relief purposes under the DLM Program, then during enrollment Applicant shall provide all necessary information for approval, including generator information, nameplate rating, manufacturer, date of manufacture, fuel type or energy source, and the kW enrolled using the equipment. Applicant must state as part of enrolling Customers using Electric Generating Equipment other required information, and written certification by a professional engineer must be provided attesting to the accuracy of all generation-related information provided, including with respect to emission levels of the equipment; and Applicant shall be required to comply with future laws and standards accepted by Con Edison as applicable to the Company with regard to Electric Generating Equipment.

If Applicant wants to operate an ESS for Load Relief purposes under the DLM Program, then during enrollment Applicant shall provide all necessary information for approval, including system information, nameplate rating, manufacturer, date of manufacture, fuel type or energy source, and the kW enrolled using the ESS equipment. Applicant must provide as part of enrolling Customers using ESS other required information, including but not limited to the Coordinated Electric System Interconnection Review study and Con Edison Permission To Operate letter; and Applicant shall be required to comply with future laws and standards accepted by Con Edison as applicable to the Company with regard to ESS.

IV. AGREEMENT AND REQUIRED DOCUMENTATION

Applicant must provide to Con Edison a signed Agreement together with all required information and relevant Project documents in order to participate in the Program. Con Edison will review all information and Project documents provided for eligibility, completeness, and accuracy.

V. CUSTOMER ENROLLMENT; ADMINISTRATIVE REVIEW

Applicant shall enroll Customers to the DLM Program utilizing the DR Portal. In order for a Customer to be able to be enrolled in Term-DLM or Auto-DLM utilizing the DR Portal, an account number is required prior to the deadline for enrollment of April 1st. If an account number must be secured, then Applicant acknowledges and agrees that any Customer to be enrolled must be in compliance with the Con Edison interconnection process. Each enrollment entered onto the DR Portal must state a valid Con Edison account number, the *Demand Response Program*, the *Baseline Verification Methodology*, *Load Relief via Curtailment* (kW) (with those participating solely by generation filling in 0 kW), the *Sub-aggregation* number (if any) and the Customer's Vintage Year of enrollment, and whether or not there is on-site generation being used to provide Load Relief. If on-site generation is being used to provide Load Relief, then Applicant must submit the *Load Reduction via Generation* (kW), *Nameplate Capacity* (kW), *Asset Type*, *Capacity* (kWh), *Model Year*, *Manufacturer*, and any associated compliance documentation. Compliance documentation must be submitted with the enrollment.

Each account number associated with a Customer enrolled on the DR Portal may be placed in an Aggregation. If an account is not placed in an Aggregation, then the account will be defaulted to "Aggregation 1" as provided for by Addendum I. Applicant will specify which sets of Customers are associated with Aggregations defined by both number and Vintage Years and so as to distinguish Aggregations awarded across Vintage Years.

The Company will accept completed applications on or before the first weekday of April prior to the start of each Capability Period, which will be considered the "Enrollment Deadline" hereunder. All accepted enrollments will have valid account numbers and corresponding Interval Meters prior to the Enrollment Deadline. Any errors on the enrollment application must be corrected no later than seven (7) business days before the commencement of the Capability Period. Only the Load Relief of enrolled Customers will be considered for calculating the Event Performance Factor and associated Performance Payment to be made to Applicant.

The Company may initiate an administrative review of all relevant information and records of Applicant or available to Applicant (including available with reasonable effort by Applicant) to verify or reconcile enrollment information and performance associated with the Program, including, without limitation, any designated Event or Test Event called by the Company. If the Company initiates an administrative review, then, among other things, all payments to Applicant will be suspended pending the outcome of the administrative review. The Company will complete its administrative review within 30 days of receipt of all requested information, but no later than December 31 of the calendar year of the relevant Capability Period.

The Company may conduct an administrative review for any purposes deemed reasonable by the Company in connection with the Program. Without limitation, if two or more Aggregators enroll the same Customer under the Program, then the Company

may use an administrative review to determine which Aggregator can receive benefit of such Customer's enrollment consistent with the terms and conditions of this Program Agreement.

If the Company determines that Applicant directly or indirectly failed to cooperate fully and promptly with an administrative review, or that the terms and conditions of this Program Agreement were violated, then Applicant may be deemed ineligible to participate in the Program until the issue is rectified, including such issues as might relate to a Customer or an Aggregation. In addition, Applicant will make or cause to be made prompt repayment to the Company of any overpayments determined to have been made.

VI. FINANCING ACCOMODATIONS

The Company acknowledges that Applicant may be subject to financing arrangements in connection with a Project, including by entering into financing agreements with one or more financing parties. The Company agrees to (1) execute any related consents to assignments or acknowledgements reasonably acceptable to the Company, and (2) provide such opinions of counsel as may be reasonably requested by Applicant or the financing party in connection with the financing or sale of a Project at Applicant's cost and expense, and within a commercially reasonable period of time following Applicant's request.

VII. ASSET OWNERSHIP AND OPERATIONAL CONTROL

As between Applicant and Applicant's financiers, on the one hand, and Con Edison, on the other hand, Applicant or Applicant's financiers will be the legal owner of any asset(s) associated with a Project. Con Edison will be entitled to rights to call upon the asset(s) to provide Load Relief during the term of this Agreement, and as more particularly provided for hereunder.

VIII. INSTALLATION REQUIREMENTS

As applicable, as between the Company and Applicant, Applicant assumes sole responsibility for all installations related to Applicant's participation in the Program. Applicant acknowledges that all work must comply fully with all applicable laws, rules, and regulations. Without limitation, Applicant shall perform any necessary interconnections in accordance with the requirements and terms and conditions set forth in the New York State Standardized Interconnection Requirements in order to deliver the Project safely and reliably. Subject also to such requirements of and full liability associated with any failures in connection with a "Permission to Operate" and associated interconnection, Applicant shall be responsible under this Agreement for all delays, costs and expenses associated with such interconnection.

IX. CONTRACT DURATION

The duration of the contract obligation for Applicant to provide the committed Load Relief to Con Edison and under the terms and conditions of this Agreement shall be from May 1 of the Vintage Year to September 30 of the last year of this Agreement, and as the term is more particularly provided for by Addendum I. For clarity and the avoidance of doubt, Term-DLM and Auto-DLM Events will only be called between May 1st and September 30th during the term of this Agreement. If there is payment of an Early Exit Fee related to any reduction in Portfolio Quantity associated with an Aggregation, then the contract duration shall end with regard to such reduction at the time of payment of the Early Exit Fee.

X. DISPATCH

Term-DLM and Auto-DLM Events can be called by the Company for response by Applicant. A Term-DLM Event or Test Event (for clarity and the avoidance of doubt, Test Event for Term-DLM or Auto-DLM, as the case might be, and as provided for by the definition hereunder) may be called by the Company for response by Applicant on not less than two hours' advance notice to Applicant. In the case of a Term-DLM Event, however, an Advisory must be issued by the Company to Applicant at least 21 hours in advance.

With respect to Term-DLM, Applicant must provide Load Relief (for a minimum of four hours) during Contracted Hours. As noted previously by the Company to Applicant, including by the RFP, the Contracted Hours are established by the Company for each Network based on individual Network needs and will be posted on the Company's website no later than January 1st for the upcoming Capability Period, or as soon thereafter as practicable. The Contracted Hours for any Customer that exports power to the Company shall be the Contracted Hours established by the Company for the Network unless the Company assigns an alternate period. If the Company assigns an alternate period, then the Company will notify Applicant within ten calendar days of enrollment on the DR Portal.

With respect to Auto-DLM, Applicant must provide Load Relief (for a minimum of four hours) after receiving at least 10 minutes of notice by the Company. Events can be called in specific Networks, feeders, or geographical areas for peak shaving or reliability needs. Auto-DLM Events may also be called as part of Term-DLM Events, and Applicant will be expected to provide Load Relief during all such Events unless an Auto-DLM Event is called on the same day and prior to the commencement of a Term-DLM Event applicable to the Applicant, and, in such cases, then the Auto-DLM Event need not be responded to prior to

the commencement of the ongoing Term-DLM Event. Applicant must be available to respond to Auto-DLM Events between 8 AM and 12 AM (midnight) seven days per week during the Capability Period.

The Company will provide reasonable notification to Applicant, including by telephone, e-mail, or machine-to-machine electronic signal, or a combination thereof, in advance of the commencement of a Load Relief Period or Test Event. Applicant shall designate in the DR Portal an authorized representative and an alternate representative to receive notifications. For clarity and the avoidance of doubt, only Applicant will receive notifications hereunder from Con Edison, including, without limitation, notifications relating to any Load Relief Period or Test Event, and Applicant shall be responsible for notifying all of its participating Customers and any necessary third parties.

XI. COMMUNICATION SYSTEMS AND EQUIPMENT

An Interval Meter is required for participation in the Program. If at the time of enrollment on the DR Portal a Customer is not billed by the Company using an Interval Meter, then, as between Applicant and the Company, Applicant shall arrange at Applicant's cost and expense (net of any discount or rebates as may be available) for such Customer to have an Interval Meter furnished and installed, and also arrange for the necessary telecommunications service to enable communications with the Company. The Company shall support meter upgrades consistent with the Company's rules, requirements and process more particularly described as part of the Company's *Meter Upgrade Manual* available on the Company's website, and as may be updated and amended from time to time by the Company.

If at the time of enrollment on the DR Portal a Customer is not billed by the Company using an Interval Meter, then the Interval Meter (with telecommunications) must be in place by the time that the Company has to determine Applicant's performance in providing Load Relief in accordance with the terms and conditions of this Agreement, including with regard to the calculation of Reservation Payments and Performance Payments. If communications with the Company as described above are not established by the time that Reservation Payments are calculated by the Company, then the Customer account will be assigned combined values of *Load Relief via Curtailment* (kW) and *Load Relief via Generation* (kW) of 0 kW for all Events during the Capability Period where data was unavailable to calculate Event Performance Factors. Also, if insufficient data are available after communications are established for calculating performance as a result of previously unavailable communications, then combined values of *Load Relief via Curtailment* (kW) and *Load Relief via Generation* (kW) of 0 kW will be assigned for all Events during the Capability Period where data was unavailable to calculate Event Performance Factors.

If a Customer to be upgraded to an Interval Meter does not already have an AMI Meter or a communicating hourly pricing meter, then requests for the Company to install an Interval Meter must be made at least 21 business days before April 1st in order to ensure that the Interval Meter is installed prior to the Customer Enrollment Deadline. If the foregoing request is made timely, then the Company will install the Interval Meter within 21 business days of the later of the Company's receipt of Applicant's payment for the meter upgrade to an Interval Meter, but only if the Customer seeking an Interval Meter already has an account number assigned by the Company and is interconnected, and reasonable evidence is provided to the Company of this readiness, including: (i) evidence that a request has been made to the telephone carrier (e.g., receipt of a job number) to secure a dedicated telephone line for a meter with landline telecommunications capability, or (ii) the active Internet Protocol (IP) address that the wireless carrier has assigned to the modem's Electronic Serial Number for a meter with wireless capability. If in connection with the foregoing provided for by this paragraph the Company misses the installation time frame and installation of the Interval Meter does not occur before the start of the Capability Period, then the Company will assign combined values of *Load Relief via Curtailment* (kW) and *Load Relief via Generation* (kW) equal to those provided during Enrollment of the Customer to Applicant for all Term-DLM or Auto-DLM Events that occurred prior to the installation of the Interval Meter, unless the delay was caused by a reason outside the Company's control, including the telephone company's failure to install a landline, or, if, at the Company's request, the New York State Public Service Commission grants the Company an exception due to a condition such as a major outage or storm.

Consistent with the Company's regulatory requirements, including with regard to the cost to a Customer, the Company will visit the premises of a Customer when requested by a Customer to investigate a disruption of normal communications between the Customer's meter and a telephone line or wireless communications, or a disruption of the operation of external pulses from a Customer's meter to a Customer's energy management equipment. If the Company cannot collect data needed to calculate Event Performance Factors from an AMI Meter and the Customer associated with the meter has allowed the Company access to its premises to make repairs upon request, then the Company will assign combined values of *Load Relief via Curtailment* (kW) and *Load Relief via Generation* (kW) equal to those provided during Enrollment of the Customer to Applicant for all Term-DLM or Auto-DLM Events for which Event Performance Factors could not be calculated. If the Company has attempted to make repairs but the Customer has denied access to the Customer's premises, then the Company will assign the combined values of *Load Relief via Curtailment* (kW) and *Load Relief via Generation* (kW) of 0 kW to Applicant for all Term-DLM or Auto-DLM Events for which Event Performance Factors could not be calculated.

XII. MULTIPLE PROGRAMS

Applicant shall not enroll an otherwise eligible Customer for participation in other Con Edison Demand Response programs if such Customer is enrolled as a participant in the DLM Program unless (i) Applicant is the customer (including a Customer) in each instance and is enrolled by Applicant as the customer on its own behalf in each instance, or (ii) Applicant is an Aggregator in each instance (Applicant-Aggregator) and Applicant-Aggregator enrolls the same customer in each instance. Unless the foregoing exception criteria are met, Customers with previously existing Demand Response contracts with Con Edison cannot participate in the DLM Program, and so shall not be eligible to receive incentives under previously existing Demand Response contracts and the DLM Program. Except for the prohibition against Applicant also receiving incentives under other Con Edison Demand Response programs, Applicant may receive incentives under other programs operated by Con Edison or other agencies. Consistent with the foregoing, with the Company's prior consent, Applicant may be permitted to apply any portion of Load Relief with respect to a Customer beyond the Portfolio Quantity of Load Relief associated with individual Aggregations hereunder to arrangements related to other Company programs, but only so long as such load relief (or Load Relief) first counts to satisfy the Load Relief contracted for pursuant to the DLM Program hereunder.

Consistent with the immediate foregoing, Applicant shall inform any Customer to be enrolled for participation in the DLM Program that such Customer will then forego any of two compensation streams that may be received by Customer as part of a Con Edison Rider R Value Stack Tariff program for the duration of the term hereof, particularly "Demand Reduction Value" (DRV) and "Locational System Relief Value" (LSRV) compensation streams. The Applicant is responsible for disclosing to Con Edison any Con Edison Rider R Value Stack Customer to be enrolled for trackability of the forgone compensation streams. In addition, a Customer may not enroll in the DLM Program while enrolled as part of a Con Edison "Rider L Tariff" program, and Applicant shall notify Con Edison that a Customer previously participating in a Rider L program is no longer doing so and may therefore be eligible to enroll in the DLM Program if the Enrollment Deadline has not passed.

XIII. INCENTIVES

Applicant will be eligible to earn incentives under the DLM Program (particularly, Reservation Payments and Performance Payments) for qualifying Aggregations, and in accordance with the terms and conditions set forth by this Agreement.

XIV. CHARGING AND NET LOADING

If Applicant has enrolled an ESS for utilization in order to provide Load Relief under this Agreement, then Applicant shall not charge such ESS during Applicant's Contracted Hours (or Call Window) for the entirety of each Capability Period during the Program Agreement. In addition, if notification of an Event is issued to Applicant by Con Edison for the next day, then Applicant shall not charge an ESS between 11 AM and 12 AM of such day. If requested by Con Edison in connection with the payment of any Reservation Payment by Con Edison to Applicant, Applicant shall submit to Con Edison an attestation stating that the Aggregation did not increase net loading on the Network during the period of overload to be addressed by the calling of an Event, and with such supporting data for the attestation provided to Con Edison as may be requested by Con Edison. If an Aggregation increases net loading during a period of overload on an Event day, then Applicant may be considered in default of this Agreement and this Agreement may be subject to termination by Con Edison, and Applicant may be assessed a penalty calculated using the Early Exit Fee calculation whether or not this Agreement is terminated by Con Edison, and, in all events, Con Edison may consider the net loss of benefit to the Network in making a determination of the appropriate remedy for the failure by Applicant.

XV. INCENTIVE PAYMENT PENALTY SCHEDULE

Incentive payments (Performance Payment and Reservation Payment) from Con Edison to Applicant will be made to Applicant following each Capability Period during the term of the Program Agreement. If amounts are owed to the Company by Applicant, then the Company will issue an invoice that will be due and payable within 30 days of issue. Amounts owed to the Company by Applicant can be calculated any time after the Enrollment Deadline if Applicant fails to enroll any customers in an Aggregation with Average Season Performance Factors of -0.80 assigned for Term-DLM Aggregations and Average Season Performance Factors of -0.90 for Auto-DLM Aggregations. If the Company does not receive payment in full, then Applicant may be barred from current and future participation in other programs of the Company. If payment is not received for the preceding Capability Period, then the Company may vacate any award received by Applicant for future Capability Periods and charge Applicant a penalty calculated as an Early Exit Fee in addition to money already owed, which must be paid within 30 days of receiving an invoice. If Applicant participates in other programs of the Company, then Applicant agrees that payments due the Applicant from those programs can be collected by the Company to satisfy outstanding debts to the Company incurred through participation in the DLM Program.

XVI. INCENTIVE PAYMENTS

The DLM Program is a "pay for performance" program. Con Edison will pay, at the agreed upon payment terms, only for Load Relief verified as being in accordance with Events, and consistent with the Load Relief contracted for between Applicant and the Company. At the conclusion of each Capability Period of the term of this Agreement, Con Edison shall calculate the

Reservation Payment to be paid by Con Edison to Applicant. The Company will also calculate a Performance Payment for participation by Applicant in Events. The dollar value equivalent to the Reservation Payment and Performance Payment shall be issued annually, subject to the terms and conditions of this Agreement, including penalties and offset provisions relating to reductions in incentive payments due to Applicant. Con Edison and Applicant agree that if the calculation of incentive payments due results in a negative value, then Applicant will owe the dollar amount to Con Edison as a positive value.

For clarity and the avoidance of doubt, Applicant will not receive incentive payments hereunder for Load Relief provided by Customers who participate in another Con Edison Program if there is an overlapping call for load relief to the same customers in accordance with the requirements of such other Con Edison program, and the parties understand and agree that the subject of this Agreement relates only to the DLM Program and incentive payments to be paid thereunder, and in accordance with the terms and conditions hereof.

As an accommodation to Applicant hereunder, and in further consideration of the terms and conditions hereof, if, in connection with any given event, the *Grid Connected Resource* hereunder is interconnected by or on behalf of Con Edison at the reliability standard for load and a system outage causes a need to curtail export, then performance of the Grid Connected Resource will be attributed under this Agreement at the level of 100% for that event. Also, if a Grid Connected Resource is interconnected below the reliability standard for load, then event performance factors will be calculated at the Event Performance Factor, and so without an adjustment factor for that event.

XVII. EARLY EXIT FEES; PENALTIES

Applicant may choose to declare a Deficient Quantity in an Aggregation and pay an Early Exit Fee on or before November 1st prior to the next Capability Period. To declare a Deficient Quantity, Applicant shall submit a request to DLMprocurement@coned.com and must pay the Early Exit Fee, which is calculated as the product of the Deficient Quantity, multiplied by the Incentive Rate, multiplied by ten percent (10%), multiplied by the remaining full Capability Periods of the contract (keeping in mind that notice of a Deficient Quantity must be provided prior to November 1st of the calendar year prior to a Capability Period). The Early Exit Fee owed to the Company by Applicant will be due and payable within 30 days of issuance of an invoice by the Company to Applicant.

Payment of an Early Exit Fee does not absolve Applicant of the requirement to pay penalties owed for prior Capability Periods. Payment of penalties are due within 30 days after an invoice is submitted to Applicant.

If an Aggregation achieves an Average Season Performance Factor of less than 0.00 for the DLM Program, then the Company can (at the Company's sole discretion) cancel the Portfolio Quantity associated with that Aggregation and assess Applicant an Early Exit Fee along with any penalties or other penalties for poor performance accumulated to that point.

XVIII. PERFORMANCE TESTING

Con Edison may conduct Test Events during any Capability Period of the Program Agreement in order to test Applicant's response to a request for Load Relief. In addition, Test Events will be considered Events for purposes of calculations of Adjusted Performance Factor, and so will be part of the calculation of Average Season Performance Factor. Test Events shall last for no more than one hour.

XIX. EVENTS OF DEFAULT

Applicant may be considered in default of this Agreement by Con Edison at Con Edison's sole discretion if Applicant is unable to meet Applicant's Load Relief obligations, and/or if Applicant otherwise fails to meet Applicant's penalty obligations or Early Exit Fee obligations when due. As more particularly provided for hereunder, failures can include not performing (or not performing sufficiently) in response to an Event; provided, however, that at all times Con Edison may choose to discuss with Applicant default circumstances relative to the risks to Con Edison's operational, demand response and reliability needs.

If Applicant breaches Applicant's obligations with respect to the sharing of Confidential Information, including, without limitation, the sharing of Incentive Rates for approved or not approved Aggregations without the express written consent of Con Edison, then Applicant shall be in default of this Agreement. Applicant may also be considered in default of this Agreement if Applicant fails to adhere to the representations made pursuant to Section XX hereof, including, without limitation, that Applicant must notify Con Edison within ten business days and provide the identity of the disclosing party if Applicant receives information from another party regarding Incentive Rates for approved or not approved Aggregations. Without limitation, for certain more serious actions by Applicant inconsistent with this Agreement, among other things, if an event of default relates to Applicant (i) disclosing or receiving information regarding Incentive Rates for approved or not approved Aggregations, (ii) inaccurately describing Electric Generating Equipment used during Events, or (iii) failing to satisfy any outstanding debt to the Company incurred through participation in the DLM Program, then Applicant may be suspended from bidding on or participating in future Con

Edison DLM programs for a term of more or less than five years commensurate with the nature and extent of the action, at Con Edison's sole reasonable discretion; provided, further that suspensions may be mitigated by the return of incentives earned in violation of this Agreement, and Applicant is otherwise current with regard to DLM Program financial and other obligations.

If Applicant is considered in default of this Agreement by Con Edison, then, without limitation, Con Edison may terminate this Agreement and Applicant may be assessed by Con Edison a penalty calculated as an Early Exit Fee.

XX. REPRESENTATIONS OF THE PARTICIPANT

Applicant represents that Applicant is duly authorized to represent the interests of a Customer with regard to the DLM Program. Applicant shall at all times conduct business consistent with the requirements of Con Edison and the rules of the DLM Program, and in an ethical manner consistent with reasonable expectations of professional conduct, and Applicant shall not represent the DLM Program in a manner that would violate the requirements of Con Edison and the rules of the DLM Program and that could adversely affect Con Edison's business, operations, reputation, and good standing with Con Edison's customers or the community. Without limitation, Applicant shall, and shall ensure that all Customers hereunder (1) comply with applicable laws, ordinances, regulations, codes and all requirements applicable to the DLM Program, (2) maintain any and all relevant trade and other licenses as required by federal, state, county, or municipal government in connection with any activity by Applicant related to the DLM Program, (3) represent truthfully, fully and accurately the technology and services proposed in connection with the DLM Program and Applicant shall not make any misrepresentations in this regard, (4) ensure that all information provided to Con Edison with respect to the DLM Program shall be truthful, accurate, and complete, including, without limitation, information provided as part of submitted applications and reports, and Applicant shall not make any misrepresentations in this regard, (5) maintain the confidentiality obligations provided for by this Agreement, including, without limitation, that Applicant shall not share Incentive Rates for approved or not approved Aggregations without the express written consent of Con Edison, and (6) notify Con Edison within ten business days and provide the identity of the disclosing party if Applicant receives information from another party regarding Incentive Rates for approved or not approved Aggregations.

Without limitation to the foregoing provided for by this Section XX, Applicant shall ensure that any Customer in the DLM Program is aware of the responsibility of such Customer to ensure that any use of generators meets all federal, state, and local regulations, and their permitted conditions. In addition, Applicant shall ensure that if a Customer is permitted to use electric generation, then such Customer is aware of such Customer's responsibility for tracking the hours of use or amount of emissions to ensure participation in tests and/or events in compliance with all limits on hours of use or amount of emissions.

Also, without limitation, Applicant shall ensure appropriate registration and compliance in accordance with the requirements of the *Uniform Business Practices for Distributed Energy Resource (DER) Suppliers*, which is provided for by New York State Public Service Commission (PSC) Case 15-M-0180.

Applicant represents that Applicant shall inform any Customer to be enrolled for participation in the DLM Program that such Customer will then forego any of two compensation streams that may be received by Customer as part of a Con Edison Rider R Tariff program for the duration of the term hereof, particularly DRV and LSRV compensation streams.

A failure under this Section XX by Applicant shall be considered by Con Edison as evidence of a breach of this Agreement and may be considered an event of default under Section XIX.

XXI. FORCE MAJEURE

Applicant shall be excused in any delay in completion of the DLM Program Agreement arising from a cause beyond its control which Applicant could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Applicant, strike which is not the result of an unfair labor practice or other unlawful activity by Applicant, war, terrorism, epidemic, cyber-attack, riot, and failure of public transportation facilities. Delays related to known Fire Department of New York positions shall not be excusable delay. Delays on account of the COVID-19 pandemic and any subsequent expressions, characterizations or iterations associated therewith shall not be excusable delay. Delay in Applicant's receipt of subcontracted supplies or services for reasons beyond Applicant's control shall not be excusable delay to the extent that the supplies or services are available to Applicant from another source. The unavailability of sufficient, qualified labor to perform under the DLM Program Agreement shall not be excusable delay unless the unavailability is caused by a strike that is not the result of an unfair labor practice or other unlawful activity by Applicant. Applicant shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update the Company on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Applicant's sole and exclusive remedy for such delay and the Company shall not be liable for any damages or additional costs incurred as a result of such delay.

XXII. TAX LIABILITY AND CREDITS

The Company is not responsible for any taxes that may be imposed on Applicant as a result of participation in the Program, including with respect to incentives received under the Program. Applicant may wish to consult a tax advisor regarding any tax consequences of participation in the Program. Applicant must provide to Con Edison its valid Federal Tax Identification Number and a W-9 form, which as of the date hereof will be provided as part of the enrollment process on the DR Portal. The party receiving the incentive payment will be issued an appropriate Federal Tax Form concerning the incentive payment.

XXIII. DISPUTES

The Company will have sole reasonable discretion to determine the final resolution of any and all issues pertaining to the Program, including, but not limited to, eligibility, and incentive amounts payable.

XXIV. PROGRAM CHANGES

The Company reserves the right to modify or terminate the DLM Program at any time, with or without notice, and without any liability to Applicant except as expressly stated herein. The Company will honor all written commitments made prior to the date of any such modification or termination, provided that requirements specified herein are satisfied.

XXV. PROGRAM EXPIRATION

Enrollment for the DLM Program will end at the end of the summer of the final year for Aggregation identified as part of Addendum I, when funds are depleted, or when the Program is terminated, whichever occurs first.

XXVI. USE OF CON EDISON MARKS, MARKETING

All uses of the Con Edison name and any other trademark and/or service mark (including, without limitation, any logo design) owned by Con Edison (the "Con Edison Marks"), including, without limitation, use of the Con Edison Marks on Applicant's website and in promotional materials, must be approved by Con Edison through the then-current process required by Con Edison. Consistent with the immediate foregoing, Con Edison hereby grants to Applicant a non-exclusive, nontransferable, royalty-free license to use the Con Edison Marks in connection with any pre-approved marketing material solely for the purpose of marketing the Program consistent with the objectives of this Agreement. Applicant may use the Con Edison Marks only as may be pre-approved by Con Edison, and shall not be permitted to create and use any new or additional marketing materials containing any Con Edison Marks without Con Edison's consent. Applicant shall acquire no right, title, or interest in the Con Edison Marks other than the limited license stated herein. Applicant's use of the Con Edison Marks shall inure to the exclusive benefit of Con Edison, its successors and assigns.

Applicant may not make statements about this Agreement or the participation of Applicant in the Program without the express prior written permission of Con Edison in each case.

XXVII. Confidentiality

The parties shall, and shall cause their respective officers, directors, trustees, employees and agents (including, without limitation, any third party contractors hereunder and employees of such third party contractors) to treat all non-public or proprietary information exchanged between them or otherwise recorded or captured in connection with or pursuant to this Agreement, whether or not such information is provided in writing and regardless of the form or medium in which it is provided, as "Confidential Information" under this Agreement. Confidential Information shall include, without limitation, the terms of this Agreement and all documents related to the Program, customer information, confidential and proprietary equipment and services, and all related code, algorithms, documentation and similar information, and any non-public ideas, plans or information related to the foregoing, including, without limitation, Incentive Rates for approved or not approved Aggregations and information of a technological or business nature developed or owned by either party. Neither party shall disclose to any third party the existence or details of this Agreement without the non-disclosing party's prior written consent, with such consent not to be unreasonably withheld, conditioned, or delayed, except that Con Edison may disclose the existence and details of this Agreement (including, without limitation, the related documents related to the Program), in connection with Con Edison reporting on or promoting its energy efficiency and demand management programs. Applicant may disclose Confidential Information to any subcontractor or representative that has a legitimate "need to know" the Confidential Information, provided that such subcontractor or representative is advised of the confidential/proprietary nature of such Confidential Information and is caused by Applicant to observe the terms of this confidentiality provision. Applicant shall be responsible to Con Edison for any act or omission of a subcontractor or representative, which, if committed by Applicant, would constitute a breach of this Agreement. Furthermore, with respect to Confidential Information that constitutes customer data or information, Applicant agrees to keep such Customer data in the strictest confidence and Applicant agrees to be bound by and perform in accordance with the guidelines set forth by the PSC as such may be applicable.

XXVIII. DISCLAIMER

Applicant acknowledges and agrees that Applicant entering into this Agreement and participating in the Program are completely voluntary. Applicant further acknowledges and agrees that neither the Company nor its affiliated entities nor their respective trustees, directors, officers, shareholders, employees, contractors, agents or representatives shall be liable to Applicant or to any other person or entity for any claim, charge, complaint, cause of action, damage, loss, agreement or liability of any kind or nature whatsoever, whether known or unknown and whether at law or in equity, arising out of, related to or in connection with the DLM Program.

XXIX. NO REPRESENTATIONS OR WARRANTIES

NEITHER THE COMPANY NOR ITS CONTRACTORS, REPRESENTATIVES OR AGENTS MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PROGRAM, ANY AGGREGATION, THE ADEQUACY OF ANY AGGREGATION DESIGN OR PLAN OR ENERGY EFFICIENCY OR DEMAND MANAGEMENT MEASURE OR ANY EQUIPMENT, CONSTRUCTION OR INSTALLATION OF EQUIPMENT OR THE AMOUNT OF INCENTIVES TO BE PAID WITH RESPECT TO AN AGGREGATION, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS PROVISION SHALL SURVIVE THE EXPIRATION, TERMINATION OR CANCELLATION OF THIS AGREEMENT AND THE PROGRAM AND ANY PARTICIPATION THEREIN BY APPLICANT.

XXX. LIABILITY LIMITATION

IN NO EVENT IS EITHER PARTY (INCLUDING BY OR THROUGH ANY OF ITS CONTRACTORS, REPRESENTATIVES OR AGENTS) RESPONSIBLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE.

XXXI. RELEASE; INDEMNIFICATION

To the fullest extent permitted by law, Applicant, on behalf of Applicant and any other person or entity engaged in claiming by and through Applicant (including, without limitation, as may be relevant, Customers and Aggregators), hereby irrevocably and unconditionally releases and forever discharges, and agrees to defend, indemnify, and hold harmless the Company, its affiliated entities, and their respective contractors, past, present and future officers, directors, trustees, shareholders, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against, any and all claims, charges, complaints, causes of action, damages, losses, costs, interest, and liabilities of any kind or nature whatsoever, including reasonable attorney's fees, court costs, costs of experts and costs of investigation, whether known or unknown and whether at law or in equity arising from, related to or in any way connected with the Applicant's engagement or association with the Program (whether accepted or rejected). Accordingly, the Company recommends that Applicant (and Customers and/or Aggregators, if different) engage qualified engineers or other qualified consultants to evaluate the risks and benefits of participation in the Program and the implementation, operation or use of any project or measure on energy consumption, cost savings, or the operation of Customers' facilities. Applicant understands that this Agreement may not be approved if the Company determines that the proposed project does not meet the requirements of the Program and that final payment of any incentive amounts is contingent on satisfaction of all terms and conditions of the Program.

XXXII. GOVERNING LAW - JURISDICTION AND VENUE

The validity construction and performance of the terms and conditions of this Agreement shall be governed by and construed and enforced in accordance with the law of the State of New York, without regard to its conflicts of law provisions. Applicant irrevocably submits and agrees to the jurisdiction of the state and federal courts of the State of New York situated in New York County in any action, suit or proceeding related to, or arising out of this Agreement and, to the extent permitted by applicable law, Applicant waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (a) that Applicant is not personally subject to the jurisdiction of such courts of the State of New York, (b) that the venue of the action, suit or proceeding is improper, (c) that the action, suit or proceeding is brought in an inconvenient forum; or (d) that the subject matter of these terms and conditions may not be enforced in or by such courts of the State of New York. Without prejudice to any other mode of service or process, Applicant consents to service of process relating to any such proceedings by personal or prepaid mailing in registered or certified form of a copy of the process to Applicant at its address set forth in this Agreement.

XXXIII. SEPARATE COUNSEL

Before entering into this Agreement and participating in the Program, Applicant is encouraged to retain legal counsel to review the terms and conditions of this Agreement and to advise Applicant regarding Applicant's rights and obligations hereunder and under the Program.

XXXIV. SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, then the validity, legality and enforceability of the remaining provisions are in no way affected or impaired. The remaining provisions remain in full force and effect and the invalid, illegal or unenforceable provision will be deemed stricken from the agreement. If necessary to effectuate the intent of the parties, then the parties will cooperate to reach a mutually acceptable provision which is valid, legal, and enforceable to replace the stricken provision.

XXXV. NOTICES

For coordination purposes, any notice or other communication, including a change of address or of the person to be notified (but not including invoices or routine correspondence relating to performance of the Services, which may at times be provided by electronic mail) given under this Agreement to any party must be in writing and must be sent by hand or overnight mail service, or registered or certified United States mail, return receipt requested, to the attention of the parties at the respective addresses set forth below, or by electronic mail with means sufficient to confirm receipt, including by acknowledgement, response, or other action sufficient to demonstrate receipt:

to the Company:

e-mail: DLMprocurement@coned.com

with a copy to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, 10th Floor NW New York, NY 10003
Attn: Director of Distribution Planning

and with a copy to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1800 New York, NY 10003
Attn: General Counsel

to the Applicant:

e-mail:

with a copy to:

Attn:

XXXVI. HEADINGS

The descriptive headings used in this Agreement are for purposes of convenience only and do not constitute a part of this Agreement.

XXXVII. MODIFICATION; AMENDMENT OR SUPPLEMENT

This Agreement, together with all documents and other materials delivered pursuant hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, written or oral, with respect to such subject matter. Any modification, amendment or supplement to this Agreement shall not be valid or enforceable against either party unless it is in writing and signed on behalf of both parties by their respective duly authorized representatives.

XXXVIII. NON-ASSIGNMENT

Neither this Agreement, nor any part or the whole of any project arising hereunder, and to include no part or the whole of any work associated with any project, may be assigned, delegated, subcontracted, or otherwise transferred by Applicant without the prior written approval of the Company in each case. Notwithstanding the immediate foregoing, Applicant may elect to transfer part or all of Applicant's Portfolio Quantity for an Aggregation prior to the Enrollment Deadline of a Capability Period to an approved Aggregator ("Transferee"). All transfers to a Transferee must be completed before the Enrollment Deadline to take effect for the upcoming Capability Period, otherwise the transfer shall take effect after the end of that year's Capability Period. Transferee shall be required to take on fully the contractual responsibilities associated with a transfer and shall be required to execute any and all agreements with Con Edison to do so and before the transfer can take effect. If Transferee has existing Aggregations for a given Vintage Year in a given Network, then the transferred Aggregation will be added as a new sub-

aggregation, and, in such events, more than three sub-aggregations (not normally permissible) will be deemed permissible.

XXXIX. INDEPENDENT CONTRACTORS

The parties acknowledge and agree that the Company and Applicant are independent contractors hereunder, and that nothing in this Agreement shall be construed so as to create any partnership, joint venture, or employee-employer relationship among or between the Company and Applicant, including, without limitation, any incentive payment arrangement hereunder. Neither party shall represent itself as having the authority or power to bind, or act on behalf of, the other party. Each party will be solely responsible for payment of all compensation owed to its employees and employment-related taxes, as well as maintenance of appropriate worker's compensation for its employees and general liability insurance. If Applicant is not a Customer, then Applicant further acknowledges and agrees that Con Edison is not a party to any contract between or among Applicant and any Customers, nor is Con Edison in a partnership, joint venture, or other relationship with Applicant to provide any benefit to Customers, and Applicant shall indemnify, defend, and hold harmless Con Edison with respect to all claims relating thereto, and as more particularly set forth as part of Section XXX hereof.

XL. GIFT POLICY AND UNLAWFUL CONDUCT

Applicant is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Applicant, its employees, agents, and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under this Agreement. Furthermore, Applicant is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and Applicant or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Applicant represents, warrants, and covenants that Applicant, its agents, employees, and subcontractors have not engaged and will not engage in any of the acts prohibited under this Section XL. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Applicant shall be in default under this Agreement and all other contracts between Con Edison and Applicant and (a) Con Edison may, in its sole discretion, cancel for default this Agreement and any other contract between Con Edison and Applicant, (b) Con Edison may, in its sole discretion, remove Applicant from Con Edison's list of qualified bidders, (c) Applicant shall have forfeited all rights it has under this Agreement and any other contract between Con Edison and Applicant (including, but not limited to, the right to pay payments for services performed or goods furnished), and (d) Con Edison shall have no further obligations to Applicant relating to such contracts. In addition, Applicant shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Section XL, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Applicant may have violated this Section XL, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Applicant under this Agreement or any other contract between Con Edison and Applicant during the pendency of such investigation. The remedies set forth in this Section XL are non-exclusive, and Con Edison expressly reserve all rights and remedies under such contracts, and in law and equity. For the purposes of this Section XL, the term "Con Edison" shall include all of Con Edison's affiliates, including, but not limited to, Orange and Rockland Utilities, Inc. Applicant shall promptly report any alleged violation of this Section XL to Con Edison's Vice President of Purchasing or to Con Edison's Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

XLI. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall be deemed to be an original, but all of which shall constitute one and the same Agreement. If any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, then such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page is an original thereof.

Agreement and Signature (Required for all Agreements)

I certify that all statements made in this Agreement and required documents provided are true and correct to the best of my knowledge. I agree to the terms and conditions of the Program. (***Applicant signing this Agreement may be an Aggregator or a Customer (or a third party authorized on behalf of a Customer or Aggregator.)***)

Applicant (please print name and title)	Signature (Applicant)	Date

Con Edison Authorized Representative
(please print name and title)

Signature (Con Edison)

Date