

## DIRECT CUSTOMER OPERATING AGREEMENT

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**APPENDIX NO. 1 CUSTOMER INFORMATION FORM**

**DIRECT CUSTOMER  
OPERATING AGREEMENT**

This agreement (“Agreement”), entered into by Consolidated Edison Company of New York, Inc., a New York corporation having an office for the transaction of business at 4 Irving Place, New York, New York 10003 ("Con Edison") and \_\_\_\_\_, a \_\_\_\_\_ corporation, having an office for the transaction of business at \_\_\_\_\_ ("Customer"),

**WITNESSES**

**WHEREAS**, Con Edison has established a retail access program (the “Power Your Way Program”), as described in its Schedule for Retail Access, P.S.C. No. 2 – Retail Access ("Retail Access Schedule") and its Retail Access Implementation Plan and Operating Procedure (the “Operating Procedure”), both of which are on file with the New York State Public Service Commission ("PSCNY"), together with Con Edison's Schedule for Electricity Service, PSC No. 9 – Electricity ("Full Service Schedule");

**WHEREAS**, the Retail Access Program is subject to the Uniform Business Practices (“UBP”) adopted by the PSCNY and incorporated as Addendum UBP in the Retail Access Schedule;

**WHEREAS**, Customer is an eligible Direct Customer under the Retail Access Program and will purchase electric energy and capacity on an unbundled basis on its own behalf from a supplier other than Con Edison;

**WHEREAS**, Customer meets the eligibility requirements under the Power Your Way Program; and

**WHEREAS**, Con Edison has agreed to render delivery service in accordance with the terms and conditions of this Agreement and the Retail Access Schedule;

**NOW THEREFORE**, in consideration of the premises and mutual promises contained herein, Con Edison and Customer agree as follows:

## **ARTICLE I**

### **1.1 Incorporation By Reference**

The rights and obligations of Con Edison and Customer under this Agreement shall be governed by the provisions of Con Edison's Retail Access Schedule and the Operating Procedure, as the same may be amended, modified, or superseded from time to time. In the event of any conflict, the terms of this Agreement shall govern with respect to services provided hereunder.

### **1.2 Term**

This Agreement is effective as of \_\_\_\_\_, \_\_\_\_\_. It will remain in effect until terminated in accordance with its terms, the Operating Procedure, or an order of the PSCNY; provided that Con Edison may terminate delivery services under this Agreement in accordance with General Rule III (15) of the Full Service Schedule and re-establish it in accordance with General Rules III (19) and III (20) of the Full Service Schedule.

## **ARTICLE II**

### **2.1 Creditworthiness**

Customer shall comply with the requirements set forth in General Rule III (1) of Con Edison's Full Service Schedule for creditworthiness and security deposits in conjunction with delivery services and, to the extent applicable, with the creditworthiness requirements of the UBP.

### **2.2 Payments**

Customer shall pay all charges assessed to it in accordance with the Retail Access Schedule and this Operating Agreement.

### **2.3 Representations and Warranties.**

- A.** Customer represents and warrants that the information in Appendix No. 1 (Customer Information Form) is correct. Customer will promptly inform Con Edison of any changes in such information.
- B.** Customer represents and warrants that it is in compliance with all obligations detailed in Section 2.2 of the Operating Procedure and the UBP.

## **2.4 Aggregation of Load.**

If Customer aggregates and schedules load for itself and other Direct Customers, each Direct Customer remains responsible for meeting all requirements placed on Direct Customers.

## **ARTICLE III**

### **3.1 Rates and Charges**

The charge for each account participating in the Retail Access Program will be the per unit rate for the service classification applicable to that account multiplied by the demand or amount of energy consumed by the account, as appropriate. Customer will arrange for service and pay charges under any applicable NYISO schedule that are necessary for delivery of its energy to Con Edison's system.

### **3.2 Taxes**

Each party hereto will be liable to the appropriate tax authorities for sales, use, gross receipts or other similar or different taxes imposed upon the revenues derived or services rendered by such party.

### **3.3 Con Edison Service**

Con Edison will provide usage information for Customer to the NYISO to enable the NYISO to reconcile energy and installed generating capacity.

Con Edison will provide the following services to Customer upon request, at the rates set forth in the Retail Access Schedule, or the Operating Procedure:

Special Meter Readings (for meters controlled by Con Edison)

Additional Customer Information (including more frequent access to Interval Information)

Account Separation

### **3.4 Metering, Billing, and Payment**

- A.** Retail delivery service will be metered at the point of service termination in accordance with General Rule III (8) of the Full Service Schedule. Con Edison will administer each of the Direct Customer's accounts and render to each Customer a single bill for each account. Charges and fees for services pursuant to Section 7 of the Operating Procedure will be invoiced separately.

- B.** The provisions of General Rule III (11) of the Full Service Schedule are applicable with respect to payment matters such as backbills, estimated bills, plural-meter billing, tampered equipment, inability to gain access, deferred payment agreements, late payment charges, the calculation of service in excess of that served under a program listed in General Rule III(11)(W), and interest on overpayments.
- C.** Customer shall pay the full amount stated in any invoice from Con Edison to Customer, without deduction, set-off or counterclaim, within twenty (20) days from the date of such invoice. Claims that any invoice is not correct will be made no more than ninety (90) days after the date of the electronic transmittal or postmark date.
- D.** Upon failure of Customer to make any payment when due under this Agreement, Con Edison will assess a late payment charge at the rate stated in the Full Service Schedule on all overdue billed amounts, including arrears and unpaid late payment charges.

### **3.5 Customer Accounts**

Con Edison will provide Customer with Customer's billing determinants and such other information as is detailed in the UBP and Operating Procedure. Such information will be provided in accordance with the procedures set forth in the Operating Procedure.

## **ARTICLE IV**

### **4.1 Complaint Procedure for Anti-Competitive Claims**

Customer or any competitor of Con Edison that believes that Con Edison has violated the standards of conduct established in the Agreement and Settlement may file a complaint in writing with Con Edison. The Company will respond to the complaint within twenty (20) business days after receipt of the complaint. Within fifteen (15) business days after filing of such response, Con Edison and the complaining party will meet in an attempt to resolve the matter informally. If Con Edison and the complaining party are not able to resolve the matter informally, the matter will be referred promptly to the PSCNY for disposition.

## **4.2 Resolution of Disputes**

Any dispute arising with respect to service under this Agreement (other than a dispute under Section 4.1), will be resolved pursuant to the UBP.

## **4.3 Liability**

Con Edison will endeavor at all times to provide regular and uninterrupted transmission and distribution services, but in case such services shall be interrupted or irregular or defective or fail from causes beyond its control or through ordinary negligence of employees, servants, or agents, Con Edison shall not be liable therefor. In accordance with operating policies established by the Company or the New York Independent System Operator, conditions on the electric transmission or distribution system could require remedial actions, including voltage reduction or load shedding, in the interests of preserving system safety and reliability. Such actions shall constitute a circumstance beyond the control of the Company for which the Company shall not be liable.

## **4.4 Notices**

Except with respect to information exchanged by Electronic Data Interchange (“EDI”), any notice to be given by Customer or Con Edison to each other hereunder will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that party (or at such other address as that party may from time to time designate by giving notice thereof):

To Con Edison: Consolidated Edison Company of New York, Inc.  
Retail Choice Operations  
4 Irving Place 9<sup>th</sup> Floor  
New York, New York 10003  
Attention: Section Manager

To Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone No.

**4.5 Amendments**

Notwithstanding any provision of this Agreement, Con Edison may at any time propose and file with the PSCNY changes to the rates, terms, and conditions of Retail Access Schedule, and/or major changes to the Operating Procedure. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the PSCNY.

**4.6 Prior Agreements Superseded.**

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, supersedes any and all previous understandings between the parties with respect to the subject matter hereof, and binds and inures to the benefit of the parties, their successors and permitted assigns.

**4.7 Waiver and Modification.**

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the parties hereto. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

**4.8 Applicable Law and Forum.**

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of New York except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Customer irrevocably consents that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York or a federal court of the United States of America located in the State of New York, County of New York. Customer irrevocably waives any objection that it may now or in the future have to the State of New York, County of New York as the proper and exclusive forum for any legal action or

proceeding arising under or relating to this Agreement.

**4.9 Severability.**

If one or more provisions herein will be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

**4.10 Agency.**

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between Con Edison and Customer or to impose any such obligation or liability upon Con Edison.

**4.11 Not for the Benefit of Non-Parties**

This Agreement is for the benefit of Customer and Con Edison, and is not for the benefit of third parties.

**IN WITNESS WHEREOF**, Con Edison and Customer have executed this Agreement.

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By: \_\_\_\_\_

Name:

Title:

Date:

[Customer]

By: \_\_\_\_\_

Name:

Title:

Date:

**APPENDIX NO. 1**

**CUSTOMER INFORMATION FORM**

## CUSTOMER INFORMATION

1. Name: \_\_\_\_\_  
DBA Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Town/City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code + 4: \_\_\_\_\_ Room: \_\_\_\_\_
  
2. Mailing Address, if different from above:  
DBA Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Town/City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code + 4: \_\_\_\_\_ Room: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax No.: \_\_\_\_\_
  
3. Customer Contact Personnel (Name and Telephone Number)
  
4. Internet Address \_\_\_\_\_ @ \_\_\_\_\_
  
5. Provide Names and Titles of Officers of All Partners on a separate sheet include mailing address and telephone number if different from above.
  
6. Attach a copy of the determination of eligibility issued by the New York State Department of Public Service.
  
7. Attach a copy of the executed NYISO service agreements.
  
8. Do you have an established ongoing business relationship with Con Edison, either as a seller, purchaser, or both? If so, provide details on a separate sheet.
  
9. What is the sales tax status of your business? Check one:  
( ) Taxable ( ) Non-taxable ( ) Partially tax exempt
  
10. If you claim tax exemption, attach a copy of the appropriate exempt certificate to this form.
  
11. Tax Identification Number (Required): \_\_\_\_\_
  
12. Provide two bank references

