



# Non-Wires Solutions Program Agreement

**Participant Eligibility** The Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) customer (“Customer”) identified in this Non-Wires Solutions Program Agreement (as amended and in effect from time to time, this “Agreement”) is a Con Edison electric account holder or a customer whose basis of eligibility to participate in the Company’s Non-Wires Solutions Program (hereinafter, “Program”) is specified in Addendum 2. Con Edison will determine Customer’s Program eligibility at its discretion in connection with Con Edison’s review process. This Agreement may be completed by Customer or by an aggregator or other third party acting on Customer’s behalf. (The party completing this Agreement is referred to herein as the “Applicant”.) If the Applicant is a third party that has not provided Customer information below, Con Edison will determine Program eligibility based upon the eligibility of the Customer(s) identified in Addendum 1.

## Project Requirements

Program incentives will be provided only in respect of projects or portfolios of projects that adhere to all Program requirements, including the following, unless otherwise specified in Addendum 2:

1. The project may not commence, and existing equipment to be replaced or made unnecessary by the project may not be removed or disconnected, until after the project is accepted by Con Edison, baseline conditions are confirmed, and pre-installation inspections (if required) have been completed.
2. Agreements may be approved for (i) single Customer projects in which Customer’s load and project load reduction are clearly identified in the project plan, or (ii) a portfolio of projects, the project plans for which identify an aggregate load reduction target and provide detailed analyses thereof to be evaluated and approved by Con Edison.
3. The project must be installed and operational prior to the applicable Program milestone date. The Program milestone date will be identified by Con Edison, agreed to by the parties prior to the project’s commencement, depend upon the project scope and deployment time, and be specified in Addendum 2.
4. All other requirements set forth in this Agreement, including those contained in the terms and conditions section hereof, must be satisfied.

For questions regarding projects related to the Program, please contact Con Edison at [dsm@coned.com](mailto:dsm@coned.com) or via the Program Website [coned.com/neighborhood](http://coned.com/neighborhood)

## Non-Wires Solution Details

<b>Project Name</b>	
<b>Network</b>	
<b>Network Peak Hour</b>	
<b>Reduction Load Year</b>	
<b>Quantity of Capability Years</b>	

## Customer and Facilities Information

If not currently provided, must be submitted within 30 days after the date this Agreement is executed fully by the parties unless otherwise agreed at the time of the submission of this Agreement, and when submitted will be attached as Addendum 1.

Account Name <i>(as shown on your Con Edison bill)</i>		Con Edison Account Number (15 Digits)															
Contact Name		Day Phone															
Service Address		Email															
Address 2		Fax															
City	State	Zip	Square Footage				Annual Hours of Operation										
Year Built	Building Type (e.g., Office, Hospital)				Multifamily # of Units				Number of Floors								

**Addendum 1 - Check this box for project portfolios consisting of more than one building. Download the Addendum 1 (also called the “Multiple Facilities Template”) from the Program website, complete, and submit with this Agreement.**

**Non-Wires Solutions Program Agreement**

**Applicant Information**

An Applicant may be a Customer or a third-party authorized to apply for the Program on behalf of a Customer. If Applicant is an authorized third-party, your information is required below.

Applicant/Company Name		
Contact Name	Day Phone	
Service Address	Email	
Address 2	Fax	
City	State	Zip
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**

<input type="checkbox"/> Any incentive payments should be sent to:		
Attention To		
Payee Name		
Mailing Address		
City	State	Zip

**Proposed Project Information**

What systems are associated with the proposed project/portfolio?			
<input type="checkbox"/> Thermal Storage	<input type="checkbox"/> BMS/Controls	<input type="checkbox"/> Process Efficiency	<input type="checkbox"/> Fuel Cell
<input type="checkbox"/> Battery Storage	<input type="checkbox"/> HVAC/Chiller	<input type="checkbox"/> Non-electric Cooling	<input type="checkbox"/> CHP
<input type="checkbox"/> Demand Response (DR) Enablement	<input type="checkbox"/> Lighting	<input type="checkbox"/> IT/Data Centers	<input type="checkbox"/> Other <i>(please specify)</i>
Proposed Project Summary: (Project Details are to be provided in the Scope of Work document for the project.)			
Demand Reduction (kW) <small>(See Terms and Conditions for definition)</small>	Total Project Cost (\$)	Con Edison Contribution Requested (\$)	

**Estimated Start/Completion Date**

<b>Start Date:</b>	<b>Completion Date:</b>
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## Terms and Conditions

**ELIGIBILITY:** Unless otherwise approved by the Company, incentives are available only for permanent and temporary demand reduction measures installed at existing facilities of Customers in good standing.

**QUALIFICATION FOR INCENTIVES FROM MULTIPLE PROGRAMS:** If a Program project also qualifies for incentives under the Energy Efficiency Portfolio Standard ("EEPS"), Demand Management Program ("DMP"), a New York Independent System Operator ("NYISO") program or other programs operated by Con Edison or other agencies, the Program will allow Customer/Applicant to receive funds from all sources provided that the Customer/Applicant meets the Program's performance criteria and does not, if applicable, receive greater funds than the Customer/Applicant actually expended for the project. Customer and Applicant are responsible for adherence to the foregoing.

**QUALIFYING PROJECTS:** Projects eligible for Program incentives include distributed generation, demand response resources, the installation of electric energy efficiency, and demand management measures identified as eligible and approved by the Company. To qualify, projects must achieve demand reductions (measured in kW) in order to reduce the identified networks' demand at critical times in relation to the networks' coincident peak demand. Each project's demand reductions must be operational as agreed upon and specified in Addendum 2. The identified networks' coincident peak demand typically, although not always, occurs on hot summer days and typically, although not always, near or during the hours identified in the Non-Wires Solution Details box on page 1 of this Agreement. The Program will run through the end of the summer of the final year identified as part of the Non-Wires Solution Details box. A project's installed measures must remain operationally available until the date specified in the project plan or Addendum 2. Planned maintenance or down times are required to be scheduled for times that occur outside the networks' coincident peak demand periods and the project's required demand reduction operating hours. "Demand Reduction" is measured in kW and defined as load reduction achieved by Customers through individual energy efficiency and/or demand reduction measures installed or implemented in connection with any given project. Many of the measures approved for use in this Program achieve demand reductions, permanent or temporary, on an ongoing basis and/or for hours beyond the demand reduction periods required by this Agreement. Such additional demand reduction benefits customers and the electric distribution system generally. Nevertheless, the primary purpose of this Agreement is to achieve the required Demand Reduction centered on network coincident peak demand periods. As a consequence, projects must achieve the required Demand Reduction during the applicable time periods. Impact analyses for

individual measures or projects will be calculated based upon the expected load relief provided during the hours specified in Addendum 2. Such impact analysis will give consideration to (i) load curves relevant to, and which indicate typical electric usage patterns for, the Customer's facility type, (ii) measures involved in the project, and (iii) approved metering and baseline calculations. Energy efficiency project baseline conditions must be verified by the Company prior to a project's implementation or at the time of the project's commissioning for permanent demand reduction. Required measurement and verification for demand reductions will be specified in the project's Measurement and Verification (M&V) plan or any applicable program rules. The Company will work with Applicant (and Customer, if different) to determine and deploy the appropriate required verification process. Qualifying projects for permanent demand reductions may not include any electric energy efficiency and demand management measures, equipment or services installed prior to the date of any required pre-installation inspection and/or metering, nor may any existing equipment be removed prior to such date and re-installed later to act as support for any qualifying project. Incentives for energy efficiency measures are only available for the installation of new or refurbished equipment. Operations and maintenance measures are not eligible for incentives.

**INCENTIVE AMOUNTS:** The basis for determining the amount of incentives for which qualifying projects are eligible will be mutually agreed upon by the Company and Applicant, giving consideration to the established load reduction goals of the project. The Company's determination of any applicable incentive amount shall be final.

**AGREEMENT AND REQUIRED DOCUMENTATION:** Eligible Customers seeking to participate in the Program must submit a completed, signed Agreement, together with all relevant documents for the project, and also post security in accordance with the requirements set forth herein.

**AGREEMENT PACKAGE REVIEW AND INSPECTION:** The Company will review all Agreements and accompanying information for eligibility, completeness, and accuracy. The Company may conduct an on-site inspection or pre-installation metering of the applicable facility's existing equipment and systems. If a proposed project does not meet Program criteria, the Company will so notify Applicant and the Agreement will be rejected. Any necessary, pre-installation inspection and measurement and verification must be completed to validate baseline conditions before Applicant installs qualifying equipment in order to qualify for incentives. Any failure by Customer/Applicant to allow Con Edison or its authorized representative timely access for such purpose will result in

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Program ineligibility and non-payment of incentives. The Company reserves the right to reject any estimate of energy savings, peak demand reduction, or project cost submitted by Applicant. Applicant acknowledges that the estimated incentive amount included in any incentive offer is an estimate only; the actual incentive amount payable upon project completion will depend upon the verified kW of savings actually achieved. Further, the Company shall be entitled to seek a full or partial refund of incentives paid (1) if, at any time prior to the end of summer of the final year identified as part of the Non-Wires Solution Details box, the Company learns that the project was not actually or properly installed, or no longer meets the energy demand reductions as stated in this Agreement (subject to normal degradation), or (2) upon the occurrence of any other event or circumstance constituting a breach of this Agreement by Applicant (or Customer, if different). See "Underperformance" below.

**INSTALLATION TIME LIMITS:** All projects must be installed and operational before the milestone dates specified in the Projects Requirement section of this Agreement. Failure to meet approved deadlines will result in the forfeiture of further payments pursuant to the milestone payment schedule agreed upon in the project plan prior to project commencement or the payment by Applicant (or Customer, if different) to Con Edison of certain liquidated damages. See "Underperformance" below.

**LOAD REDUCTION GUARANTY:** Applicant guarantees that the load reduction measures provided for in this Agreement, when installed, will: (1) achieve at least the number of kW's of required demand reduction contracted for, (2) be located at the physical address specified in the project plan or, if not so specified, at the physical address identified in this Agreement as Customer's facility, (3) achieve the required demand reductions during the agreed upon operating hours near and around the network coincident peak hours (e.g., between noon and midnight), and (4) be operationally available through the date specified in Addendum 2 and any applicable program rules, or, if not specified, the end of the summer of the final year identified as part of the Non-Wires Solution Details box (the foregoing clauses (1) through (4) being collectively referred to herein as the "Load Reduction Guaranty"). Applicant's participation in the Program and receipt of incentive payments is conditioned upon the truth and accuracy of its Load Reduction Guaranty and the performance of its obligations hereunder.

**REPORTING (IF APPLICABLE, PER ADDENDUM 2):** If applicable, Applicant will submit regular and consistent progress reports to Con Edison as specified in Addendum 2. Project progress reports, if required, shall: (1) detail activities in progress, and identify sold and installed projects, as applicable, (2) specify forecasted load reductions, program costs, customer counts, peak hour

load reduction impacts achieved, and progress towards goals, and (3) provide other information at such times and in such format as mutually agreed upon, in writing, by Con Edison and Applicant (or its contractor) prior to the project's commencement.

**MEASUREMENT AND VERIFICATION:** M&V protocols for each project will be established and agreed upon in an M&V plan or as provided in applicable program rules. M&V must be completed by the Company or an independent third party that has no current or prior relationship with Applicant (or, if different, Customer). For permanent demand reduction, at minimum, an M&V plan, pre-M&V report (documenting baseline conditions), and post-M&V report (reflecting the load reductions achieved following measure implementation) will be included with the Agreement package, for review and approval by Con Edison.

**INCENTIVE PAYMENTS ARE DEPENDENT UPON MEASUREMENT AND VERIFICATION:** The incentive amount is based upon the project's actual demand savings as documented by each project's agreed upon M&V activities. Accordingly, the amount of the incentive payment may be lower than the amount of incentive contribution requested in this Agreement (which is based upon project estimates). Performance data from the project will be reviewed and verified as established in the M&V plan for the project before the final incentive payment is determined. Payment amounts will be adjusted based upon the actual energy savings and demand reductions verified by the Company. The Company reserves the right to make a reasonable number of pre- and post-installation visits to Customer's facility, upon reasonable advance notice and at mutually agreeable times. Incentive checks will be issued for each milestone achieved after verification of the performance of all installations specified in the milestone and receipt of all proper invoices related thereto.

**PAYMENT:** The Program is a "pay for performance" program. Con Edison will pay, at the agreed upon payment terms, only for load reductions that are verified.

**UNDERPERFORMANCE; BREACH OF LOAD REDUCTION GUARANTY:** Applicant acknowledges that Con Edison's agreement to pay Applicant (or Customer, if different) the incentive amounts is contingent upon the truth and accuracy of Applicant's Load Reduction Guaranty, its other representations and warranties herein, and the performance by Applicant (and Customer, if different) of its obligations hereunder. Accordingly, if Applicant/Customer shall fail to achieve at least ninety percent (90%) of the kW of required demand reduction contracted for during the project's agreed upon operational or contracted hours surrounding the network coincident peak hours (e.g., between noon and midnight) ("Energy Savings Underperformance" or a "Load Reduction Guaranty Breach"), then Applicant shall be obligated

(without limiting Con Edison's other rights and remedies under this Agreement, at law or in equity), immediately upon the occurrence of such Load Reduction Guaranty Breach and demand therefor by Con Edison, to render payment to Con Edison by check or wire transfer of immediately available funds, as liquidated damages and not as a penalty, of the amount specified below for each day (or portion thereof) that a demand response event is called between the applicable Program milestone date and the operational availability end date specified for the project (or the end of summer of the final year identified as part of the Non-Wires Solution Details box, if no operational availability end date is specified) that the Load Reduction Guaranty Breach continues. The parties acknowledge and agree that the amount of damages that Con Edison would suffer as a result of the occurrence and continuation of a Load Reduction Guaranty Beach would be substantial and difficult to calculate with certainty and that the amount specified below (as adjusted as provided below) reasonably approximates the damages that Con Edison would actually suffer. In addition, in the event of Applicant's breach, Con Edison shall be entitled to terminate this Agreement in whole or in part, effective upon notice, and shall be relieved of any responsibility to pay further incentive amounts (Applicant hereby releasing and forever discharging the Company from any and all losses, liabilities, claims, costs and expenses resulting from Applicant's failure to receive such incentive payments in accordance with the foregoing).

Liquidated damages shall be payable by breaching Applicants/Customers at the rate of \$10 per day per kilowatt of Energy Savings Underperformance, subject to a maximum limitation per Applicant/Customer equal to (x) \$150 per kilowatt of Energy Savings Underperformance per year or (y) thirty percent (30%) of the total incentive to be paid to the Applicant/Customer, whichever is less (the "Liquidated Damage Amount"). Con Edison shall provide written notice to each breaching Applicant/Customer, notifying Con Edison of a breach of the Load Reduction Guaranty and the Liquidated Damage Amount payable by Applicant/Customer. In the event that any funds are due to a breaching Applicant/Customer at the time of such demand, Con Edison will have the right, but not the obligation, to offset amounts that would otherwise be due and payable to Applicant/Customer against such Liquidated Damage Amount due from Applicant/Customer. If Con Edison elects to apply such set off, then the written breach notice/ demand for payment issued by Con Edison will so specify such application and the remaining amounts, if any, owing. The Applicant/Customer will have five (5) business days following receipt of such notice within which to render payment of the Liquidated Damage Amount (or net payment demanded), after which time Con Edison shall have the right to draw upon the Letter of Credit (or, if a cash collateral is provided, proceed against that security) to collect the same. In the event that any Letter of Credit has been drawn against, the Applicant/Customer shall restore the original amount of the Letter of Credit within thirty (30) days. If the

Applicant/Customer fails to furnish the required security in the required amount within such period, then such failure shall constitute a default under this Agreement and shall permit Con Edison, upon two (2) business days' notice to the Applicant/Customer, to draw any and all amounts remaining under the Letter of Credit, terminate Applicant/Customer from further participation in the Program and/or bar Applicant/Customer from future participation in Con Edison programs and auctions, without limiting Con Edison's other rights and remedies at law or in equity.

Any changes or exceptions to these underperformance provisions are as set forth in Addendum 2. No changes or exceptions from these provisions shall be valid unless they are documented in an Addendum 2, fully executed by both parties.

### **SECURITY AGAINST UNDERPERFORMANCE:**

Applicants/Customers will be required to furnish security to Con Edison that demonstrates, among other things, Applicant's/Customer's financial capability to pay liquidated damages in the event the Applicant/Customer fails to satisfy its Load Reduction Guaranty during the period required by this Agreement.

The security provided shall be in an amount equal to (i) 30% of the total incentive to be paid to the Applicant/Customer and (ii) \$150 per kW of demand reduction contracted for, whichever is less.

Unless a Guarantee is permitted to be and is provided hereunder (meeting the requirements set forth herein), such security shall be in the form of cash collateral or an irrevocable standby letter of credit, in substantially the form set forth as **Exhibit A** hereto or otherwise in form and substance acceptable to Con Edison (the "Letter of Credit"), from an issuing U.S. commercial bank or U.S. branch of a foreign bank ("Issuer") that, in either case, (i) has counters for presentment and payment located in the City of New York or accepts requests to draw via fax, and (ii) has a rating assigned to its senior unsecured long term debt obligations not supported by third party credit enhancement or a rating assigned to it as an issuer rating (a "Credit Rating") of at least (x) "A-" by Standard & Poor's Rating Services ("S&P") and "A3" by Moody's Investors Service, Inc. ("Moody's"), if rated by both S&P and Moody's or (y) "A-" by S&P or "A3" by Moody's, if rated by either S&P or Moody's, but not both ("Minimum Credit Rating"). The Letter of Credit shall permit drawings upon a statement from Con Edison certifying that the amount of the drawing is owed to Con Edison pursuant to this Agreement, shall require the Issuer to honor requests to draw within two (2) Business Days, and shall have an expiration date no earlier than sixty (60) days after the date Applicant/Customer satisfies all of its obligations under this Agreement (the "Required LC Expiration Date"). Should the Letter of Credit have an expiration date prior to the Required LC Expiration Date, and Applicant/Customer shall fail to cause a substitute Letter of Credit to be furnished to Con Edison at least thirty (30) days prior to the expiration date of the initial Letter of Credit, such

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failure shall constitute a default under this Agreement and shall permit Con Edison to draw thereupon. Similarly, if the Issuer should fail to maintain the Minimum Credit Rating at any time during which the Letter of Credit is required to be posted (*i.e.*, a “Downgrade Event”) and Applicant/Customer fails to cause a substitute Letter of Credit to be furnished to Con Edison within two (2) Business Days (or, if the Issuer still has a Creditworthy Rating despite suffering a Downgrade Event, within three (3) Business Days) after Con Edison has provided written notice to Applicant/Customer demanding such substitute Letter of Credit, such failure shall constitute a default under this Agreement and shall permit Con Edison to draw thereupon. For purposes hereof, “Creditworthy Rating” means a Credit Rating of at least (i) “BBB- (not on Credit Watch)” by S&P and “Baa3 (not on Credit Watch)” by Moody’s, if such entity is rated by both S&P and Moody’s or (ii) “BBB- (not on Credit Watch)” by S&P and “Baa3 (not on Credit Watch)” by Moody’s, if such entity is rated by either S&P or Moody’s, but not both. “Credit Watch” means a negative ratings outlook by S&P or Moody’s, sometimes referred to as “Negative Watch”, “Credit Watch”, “Negative, for Potential Downgrade” or “Negative Outlook”.

The parties recognize that the nature of each project and the circumstances of each Applicant/Customer will vary. Any further provisions concerning the security to be posted by Applicant/Customer hereunder are set forth in Addendum 2, as mutually executed by the parties.

**USE OF SECURITY:** Con Edison may draw upon the security and/or exercise any and all rights in respect of such security as provided in this Agreement and in the security instrument.

**TAX LIABILITY AND CREDITS:** The Company is not responsible for any taxes that may be imposed on Customer (or Applicant, if different) as a result of projects installed or incentives received under this Program. Applicants may wish to consult a tax advisor regarding any tax consequences of this offer. Each Applicant (and Customer, if different) must provide to Con Edison its valid Federal Tax Identification Number and a W-9 form. The party receiving the incentive payment will be issued an appropriate Federal Tax Form concerning the incentive payment.

**REMOVAL OF EQUIPMENT:** As a condition of participation in the Program, Applicant agrees that any and all project-related removal and disposal of equipment or materials will be conducted at its sole cost and expense and in accordance with all applicable laws, rules, and regulations.

**DISPUTES:** The Company will have sole discretion to determine the final resolution of any and all issues pertaining to the Program, including, but not limited to, project eligibility, energy savings and peak demand reduction achieved, and incentive amounts payable.

**PROGRAM CHANGES:** The Company reserves the right to modify or terminate this Program at any time, with or without notice, and without any liability to Applicant or Customer 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 the project is fully completed by the time required hereby or thereby and all other requirements specified herein or therein are satisfied.

**PROGRAM EXPIRATION:** Enrollment for this Program will end at the end of the summer of the final year identified as part of the Non-Wires Solution Details box, when funds are depleted, or when the Program is terminated, whichever occurs first.

**INSTALLATION REQUIREMENTS:** Applicant and Customer (if different) assume sole responsibility for all installation work. Applicant and Customer acknowledge that all work must comply fully with all applicable laws, rules, and regulations.

**DISCLAIMER:** Applicant and Customer each acknowledge and agree that their submission of this Agreement and, if applicable, participation in the Program, are completely voluntary. Applicant and Customer further acknowledge and agree that neither the Company nor its affiliated entities nor their respective trustees, directors, officers, shareholders, employees, contractors, agents or representatives shall be liable to Customer or 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 (a) any project undertaken or attempted to be undertaken by Customer, including, without limitation, the removal of, installation of, or use of any equipment, load reduction or demand response measures in connection with the Program, (b) the review, rejection or approval of this Agreement, any worksheets, attachments or addendums by the Company or its contractors or representatives, or (c) the determination of the total incentive amounts due to Customer or Applicant.

**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 PROJECT, THE ADEQUACY OF ANY PROJECT 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 A PROJECT, 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 (AND CUSTOMER, IF DIFFERENT).**

**LIABILITY LIMITATION: IN NO EVENT IS THE COMPANY OR ANY OF ITS CONTRACTORS, REPRESENTATIVES OR AGENTS RESPONSIBLE TO APPLICANT OR CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE.**

**RELEASE; INDEMNIFICATION:** To the fullest extent permitted by law, Customer and Applicant each, on behalf of themselves and any other person or entity claiming by and through either of them, 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 (a) Applicant's or Customer's participation in the Program, including, without limitation, the removal of any equipment or the design, installation or performance of any energy efficiency or demand management measure or equipment, or (b) Customer's or Applicant's Agreement to participate in the Program (whether accepted or rejected). Accordingly, the Company recommends that all Applicants (and Customers, if different) consider engaging 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 (and Customer, if different) understands that this Agreement may not be approved if the Company determines that the proposed project does not meet the requirements of the Program. Applicant (and Customer, if different) understands that final payment of any incentive amounts is

contingent on satisfaction of all terms and conditions of the Program.

**GOVERNING LAW - JURISDICTION AND VENUE:** The validity, construction and performance of these terms and conditions 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. Customer and Applicant irrevocably submit and agree 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, Customer and Applicant each waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (a) that Customer or Applicant are 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 and Customer each 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 Customer and/or Applicant at its address set forth in this Agreement.

**SEPARATE COUNSEL: THIS AGREEMENT IS A LEGAL DOCUMENT.** Before submitting this Agreement and participating in the Program, Applicant (and Customer, if different) is encouraged to retain legal counsel to review the terms and conditions of this Agreement and to advise it regarding its rights and obligations hereunder and under the Program.

**SEVERABILITY:** If any provision of this Agreement is held to be invalid, illegal or unenforceable, 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 agreement, the parties will cooperate to reach a mutually acceptable provision which is valid, legal, and enforceable to replace the stricken provision.

**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) 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:

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to the Company: Consolidated Edison Company of New York, Inc.  
4 Irving Place, 10<sup>th</sup> Floor NW  
New York, NY 10003  
Attn: Director of Energy Efficiency and Demand Management

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

to the Applicant/Customer

Attn:

with a copy to:

Attn:

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

**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.

**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 and/or Customer without the prior written approval of the Company in each case.

**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. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, 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 were an original thereof.



**Agreement Requirements (Please Check Both)**

- Yes, I have provided a detailed Scope of Work document (SOW) and baseline requirements.
- Yes, I have signed the Program Agreement.

To ensure that your Agreement package is processed in a timely manner, please make sure that you submit all of the documentation below:

1. Completed Program Agreement
2. Signed Addendum 2 – If no changes check box on top of Addendum 2.
3. Scope of Work, including all relevant information.
  - Cut Sheets for all equipment, including technical data and testing laboratory information
  - Project Schedule (Including estimated Start/Completion Dates on Page 2)
  - W-9 Form
  - Proposed Cost Estimates
  - Completed Addendum 1/Multiple Facilities Template (if applicable)

**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 set forth in this Agreement. **A signature is required from the Account Holder or Applicant, if different. (An Applicant may be a Customer or a third-party authorized to apply for the Program on behalf of the Customer or Customers identified on Page 1 of, or in Addendum 1 to, this Agreement.)**

<b>Account Holder Name (please print)</b>	<b>Account Holder Signature</b>	<b>Date</b>
<b>Applicant Name (please print)</b>	<b>Applicant Signature</b>	<b>Date</b>
<b>Con Edison Authorized Representative</b>	<b>Signature</b>	<b>Date</b>

**Addendum 2: Proposed Modifications to the Non-Wires Solutions Program Agreement Standard Terms, Additional Project Plan Details, Additional Scope of Work Details, and Additional Specifications:**

(Please reference the section of the Program Agreement, Project Plan, Scope of Work or other document appended to the Program Agreement when providing information in this Addendum. If there are no changes to the Program Agreement and no additional details or specifications included in this Addendum, check the box below and sign the Addendum where indicated.)

No changes have been made to the Non-Wires Solutions Program Agreement and no Addendums or other documents have been appended to it.

Large empty rectangular box for providing details or specifications.

<b>Account Holder Name</b> <i>(please print)</i>	<b>Account Holder Signature</b>	<b>Date</b>
<b>Applicant Name</b> <i>(please print)</i>	<b>Applicant Signature</b>	<b>Date</b>
<b>Accepted by Con Edison Representative</b> <i>(please print Name and Title)</i>	<b>Con Edison Signature</b>	<b>Date</b>