

## TERMS OF SERVICE

Please read these Terms of Service (the “Agreement”) carefully. Your use of (including any access to) the Service (as defined below) constitutes your consent to this Agreement.

This Agreement is between you and Consolidated Edison Company of New York, Inc. (“Con Edison” or “we” or “us”) concerning your use of (including any access to) the Smart Energy Plan site currently located at <https://www.conedisonsmartenergyplan.com/enroll> (together with any materials and services available therein, and successor site(s) thereto, the “Service”).

BY ACCESSING OR USING THE SERVICE, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT.

IF YOU ARE AN INDIVIDUAL ACCESSING OR USING THE SERVICE ON BEHALF OF, OR FOR THE BENEFIT OF, ANY CORPORATION, PARTNERSHIP OR OTHER ENTITY WITH WHICH YOU ARE ASSOCIATED (AN “ORGANIZATION”), THEN YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF YOURSELF AND SUCH ORGANIZATION, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ORGANIZATION TO THIS AGREEMENT. References to “you” and “your” in this Agreement will refer to both the individual accessing or using the Service and to any such Organization.

**1. Changes.** We may change this Agreement from time to time by notifying you of such changes by any reasonable means, including by posting a revised Agreement through the Service. Any such changes will not apply to any dispute between you and us arising prior to the date on which we posted the revised Agreement incorporating such changes or otherwise notified you of such changes.

Your access to or use of the Service following any changes to this Agreement will constitute your acceptance of such changes. The “*Last Updated*” legend above indicates when this Agreement was last changed. We may, at any time and without liability, modify or discontinue all or part of the Service (including access to the Service via any third-party links); charge, modify or waive any fees required to use the Service; or offer opportunities to some or all Service users.

**2. Information Submitted Through the Service.** Your submission of information through the Service is governed by Con Edison’s Privacy Policy, located at <https://www.coned.com/en/conedison-privacy-statement> (the “Privacy Policy”). You represent and warrant that any information you provide in connection with the Service is and will remain accurate and complete, and that you will maintain and update such information as needed.

**3. Jurisdictional Issues.** The Service is controlled or operated (or both) from the United States, and is not intended to subject Con Edison to any jurisdiction or law other than the State of New York. The Service may not be appropriate or available for use in some jurisdictions outside of the State of New York. Any access to or use of the Service is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so. We may limit the Service’s availability at any time, in whole or in part, to any person, geographic area or jurisdiction that we choose.

**4. Smart Energy Plan.** The Service may allow you to confirm your participation in Con Edison’s Smart Energy Plan. By using the Service to confirm your participation, you represent and warrant that you are

authorized to do so with respect to the applicable Con Edison account, and, if applicable, that you meet any other eligibility criteria for such participation. You acknowledge that the Smart Energy Plan is being made available as a pilot program of Con Edison for a limited time period, and we may change or discontinue the Smart Energy Plan at any time. However, we will provide you with notice of changes affecting your Con Edison account that result from any change or discontinuation of the Smart Energy Plan. For more information about charges on your bills and rates regarding the Smart Energy Plan, please visit: <https://www.coned.com/en/accounts-billing/your-bill>.

**5. Rules of Conduct.** In connection with the Service, you must not:

- Post, transmit or otherwise make available through or in connection with the Service any materials that are or may be: (a) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (b) defamatory, libelous, fraudulent or otherwise tortious; (c) obscene, indecent, pornographic or otherwise objectionable; or (d) protected by copyright, trademark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.
- Post, transmit or otherwise make available through or in connection with the Service any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment (each, a “Virus”).
- Use the Service for any commercial purpose, or for any purpose that is fraudulent or otherwise tortious or unlawful.
- Harvest or collect information about users of the Service.
- Interfere with or disrupt the operation of the Service or the servers or networks used to make the Service available, including by hacking or defacing any portion of the Service; or violate any requirement, procedure or policy of such servers or networks.
- Restrict or inhibit any other person from accessing or using the Service.
- Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of (or any use of) the Service except as expressly authorized herein, without Con Edison’s express prior written consent.
- Reverse engineer, decompile or disassemble any portion of the Service, except where such restriction is expressly prohibited by applicable law.
- Remove any copyright, trademark or other proprietary rights notice from the Service.
- Frame or mirror any portion of the Service, or otherwise incorporate any portion of the Service into any product or service, without Con Edison’s express prior written consent.
- Systematically download and store Service content.
- Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, “scrape,” “data mine” or otherwise gather Service content, or reproduce or

circumvent the navigational structure or presentation of the Service, without Con Edison's express prior written consent. Notwithstanding the foregoing, and subject to compliance with any instructions posted in the robots.txt file located in the Service's root directory, Con Edison grants to the operators of public search engines permission to use spiders to copy materials from the Service for the sole purpose of (and solely to the extent necessary for) creating publicly available, searchable indices of such materials, but not caches or archives of such materials. Con Edison reserves the right to revoke such permission either generally or in specific cases, at any time and without notice.

You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed to access or use the Service.

**6. Registration.** You will not be required to create any user name or password in order to access or use the Service. However, you may need to register and provide certain information in connection with accessing or using the Service. You acknowledge and agree that we are not responsible for any action or omission, whether by physical, automated or electronic means, that is performed using or in connection with such information.

**7. Feedback.** If you provide to us any ideas, information, proposals, suggestions or other materials ("Feedback"), whether related to the Service, the Smart Energy Plan or otherwise, you hereby acknowledge and agree that such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place Con Edison under any fiduciary or other obligation. You hereby grant to us a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable and fully sublicensable (through multiple tiers) license, without additional consideration to you or any third party, to reproduce, distribute, perform and display (publicly or otherwise), create derivative works of, adapt, modify and otherwise use, analyze and exploit such Feedback, in any format or media now known or hereafter developed, and for any purpose (including promotional purposes, such as testimonials).

You represent and warrant that you have all rights necessary to grant the licenses granted in this section, and that your Feedback, and your provision thereof through and in connection with the Service, is complete and accurate, and is not fraudulent, tortious or otherwise in violation of any applicable law or any right of any third party. You further irrevocably waive any "moral rights" or other rights with respect to attribution of authorship or integrity of materials regarding any Feedback that you may have under any applicable law under any legal theory.

**8. Monitoring.** We may (but have no obligation to) analyze your access to or use of the Service. We may disclose information regarding your access to and use of the Service, and the circumstances surrounding such access and use, to anyone for any reason or purpose.

**9. Your Limited Rights.** Subject to your compliance with this Agreement, and solely for so long as you are permitted by Con Edison to access or use the Service, you may view one (1) copy of any portion of the Service to which we provide you access under this Agreement, on any single device, solely for your personal, non-commercial use. If you fail to comply with any of the terms or conditions of this Agreement, you must immediately cease accessing or using the Service.

**10. Con Edison's Proprietary Rights.** We and our contractors own the Service, which is protected by proprietary rights and laws. Our trade names, trademarks and service marks include CON EDISON, CONSOLIDATED EDISON AND SMART ENERGY PLAN and any associated logos. All trade names,

trademarks, service marks and logos on the Service not owned by us are the property of their respective owners. You may not use our trade names, trademarks, service marks or logos in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Service should be construed as granting any right to use any trade names, trademarks, service marks or logos without the express prior written consent of the owner.

**11. Third Party Materials; Links.** Certain Service functionality may make available access to information, products, services and other materials made available by third parties (“Third Party Materials”), or allow for the routing or transmission of such Third Party Materials, including via links. By using such functionality, you are directing us to access, route and transmit to you the applicable Third Party Materials.

We neither control nor endorse, nor are we responsible for, any Third Party Materials, including the accuracy, validity, timeliness, completeness, reliability, integrity, quality, legality, usefulness or safety of Third Party Materials, or any intellectual property rights therein. Certain Third Party Materials may, among other things, be inaccurate, misleading or deceptive. Nothing in this Agreement shall be deemed to be a representation or warranty by Con Edison with respect to any Third Party Materials. We have no obligation to monitor Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or part) through the Service at any time. In addition, the availability of any Third Party Materials through the Service does not imply our endorsement of, or our affiliation with, any provider of such Third Party Materials, nor does such availability create any legal relationship between you and any such provider.

YOUR USE OF THIRD PARTY MATERIALS IS AT YOUR OWN RISK AND IS SUBJECT TO ANY ADDITIONAL TERMS, CONDITIONS AND POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS (SUCH AS TERMS OF SERVICE OR PRIVACY POLICIES OF THE PROVIDERS OF SUCH THIRD PARTY MATERIALS).

**12. DISCLAIMER OF WARRANTIES.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: (A) THE SERVICE AND ANY THIRD PARTY MATERIALS ARE MADE AVAILABLE TO YOU ON AN “AS IS,” “WHERE IS” AND “WHERE AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY; AND (B) CON EDISON DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICE AND ANY THIRD PARTY MATERIALS, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. ALL DISCLAIMERS OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS AGREEMENT) ARE MADE FOR THE BENEFIT OF BOTH CON EDISON AND ITS PARENT COMPANY, AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSORS, CONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS, INCLUDING ICF RESOURCES, LLC AND ITS AFFILIATES AND SUPPLIERS (COLLECTIVELY, THE “AFFILIATED ENTITIES”), AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

While we try to maintain the timeliness, integrity and security of the Service, we do not guarantee that the Service is or will remain updated, complete, correct or secure, or that access to the Service will be uninterrupted. The Service may include inaccuracies, errors and materials that violate or conflict with this Agreement. Additionally, third parties may make unauthorized alterations to the Service. If you become aware of any such alteration, contact us at [SmartEnergyPlanComms@conEd.com](mailto:SmartEnergyPlanComms@conEd.com) with a description of such alteration and its location on the Service.

**13. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: (A) CON EDISON WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, RESULTING FROM YOUR ACCESS TO, OR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE OR FROM ANY THIRD PARTY MATERIALS, INCLUDING FROM ANY VIRUS THAT MAY BE TRANSMITTED IN CONNECTION THEREWITH, INCLUDING DAMAGES FOR LOSS OF PROFITS, USE OR DATA OR INFORMATION PROVIDED THROUGH THE SERVICE, AND LOSS OF OTHER INTANGIBLES, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (B) WITHOUT LIMITING THE FOREGOING, CON EDISON WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM YOUR ACCESS TO, OR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE OR FROM ANY THIRD PARTY MATERIALS, INCLUDING FROM ANY VIRUS THAT MAY BE TRANSMITTED IN CONNECTION THEREWITH; (C) YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SERVICE OR ANY THIRD PARTY MATERIALS IS TO STOP ACCESSING OR USING THE SERVICE; AND (D) THE MAXIMUM AGGREGATE LIABILITY OF CON EDISON FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF (A) THE TOTAL AMOUNT, IF ANY, PAID BY YOU TO CON EDISON TO ACCESS OR USE THE SERVICE; AND (B) TEN U.S. DOLLARS (\$10). ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS AGREEMENT) ARE MADE FOR THE BENEFIT OF BOTH CON EDISON AND THE AFFILIATED ENTITIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

**14. Indemnity.** To the fullest extent permitted under applicable law, you agree to defend, indemnify and hold harmless Con Edison and the Affiliated Entities, and their respective successors and assigns, from and against all claims, liabilities, damages, judgments, awards, losses, costs, expenses and fees (including attorneys' fees) arising out of or relating to (a) your access to, or use of, or activities in connection with, the Service (including your submission of any information through the Service and all Feedback); and (b) any violation or alleged violation of this Agreement by you.

**15. Termination.** This Agreement is effective until terminated. Con Edison may terminate or suspend your access to or use of the Service at any time and without prior notice, for any or no reason, including if Con Edison believes that you have violated or acted inconsistently with the letter or spirit of this Agreement. Upon any such termination or suspension, your right to access or use the Service will immediately cease, and ConEdison may, without liability to you or any third party, immediately delete any information you submitted through the Service, all Feedback, and all associated materials, without any obligation to provide any further access to such information, Feedback and materials. Sections 1, 3, 5, 7, and 10-20 shall survive any expiration or termination of this Agreement.

**16. Governing Law; Jurisdiction.** This Agreement is governed by and shall be construed in accordance with the laws of the State of New York, U.S.A., without regard to its principles of conflicts of law, and regardless of your location. You agree to exclusive jurisdiction of the federal and state courts located in New York County, New York State, U.S.A., and waive any jurisdictional, venue or inconvenient forum objections to such courts.

**17. Filtering.** We hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available from [https://en.wikipedia.org/wiki/Comparison\\_of\\_content-control\\_software\\_and\\_providers](https://en.wikipedia.org/wiki/Comparison_of_content-control_software_and_providers). Please note that Con Edison does not endorse any of the products or services listed on such site.

**18. Information or Complaints.** If you have a question or complaint regarding the Service, please send an e-mail to [SmartEnergyPlanComms@conEd.com](mailto:SmartEnergyPlanComms@conEd.com). Please note that e-mail communications will not necessarily be secure; accordingly you should not include credit card information or other sensitive information in your e-mail correspondence with us.

**19. Export Controls.** You are responsible for complying with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. You represent, warrant and covenant that you are not (a) located in, or a resident or a national of, any country subject to a U.S. government embargo or other restriction, or that has been designated by the U.S. government as a “terrorist supporting” country; or (b) on any of the U.S. government lists of restricted end users.

**20. Miscellaneous.** This Agreement does not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and Con Edison. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under this Agreement without our express prior written consent. We may assign, transfer or sublicense any or all of our rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term “including” or variations thereof in this Agreement shall be construed as if followed by the phrase “without limitation.” This Agreement is the entire agreement between you and Con Edison relating to the subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and Con Edison relating to such subject matter. Notices to you (including notices of changes to this Agreement) may be made via posting to the Service or by e-mail (including in each case via links), or by regular mail. Without limitation, a printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Con Edison will not be responsible for any failure to fulfill any obligation due to any cause beyond its control.

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