

Attachment H – Sample Agreement

Agreement between Con Edison and Portfolio Manager

Note: Con Edison reserves the right to change the terms in the final version of this agreement.

This Agreement ("Agreement") is entered into as of _____, 2019 (the "Effective Date") by and between the Consolidated Edison Company of New York, Inc. ("Con Edison"), a New York corporation having its principal office and place of business at 4 Irving Place, New York, New York 10003, and _____ ("Portfolio Manager"), a [insert as appropriate], having a principal business address of _____, governing the terms and conditions for Portfolio Manager's participation in the Business Energy Pro P4P Pilot, Con Edison and Portfolio Manager are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

Definitions

"Con Edison" - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for professional services to be performed for Con Edison.

"Portfolio Manager" - The contractor who is a party to the Contract with Con Edison.

"Contract" - The contract between Con Edison and the Portfolio Manager consisting of (a) a Blanket Purchase Agreement ("BPA"), Contract Purchase Agreement ("CPA") and/or Standard Purchase Order ("purchase order"), (b) the relevant Con Edison request for quotation, (c) the Standard Terms and Conditions, as well as below Pilot-specific Terms and Conditions, and (d) any documents or portions thereof incorporated by reference in (a), (b), or (c) above, including, but not limited to, special conditions, specifications, performance requirements, plans, schedules and drawings.

Payment Terms

- A. Portfolio Manager will be compensated for portfolio-level results based on the savings calculated by the AMV Platform. Portfolio Managers will have real-time access to the AMV Platform to monitor savings performance throughout the contracting term.
- B. Portfolio Manager's payments will be processed at the end of each quarter, resulting in Projects being batched based on the quarter in which they were added to the Portfolio. Each Project within the Portfolio will receive a total of three (3) Initial Payments and three (3) Annual Adjusted Payments. The Initial and Annual Adjusted Payments will be made on an annual basis. Therefore, depending on when Projects start their payment cycles, a Portfolio Manager may receive payments each quarter.
- C. The payment term for Portfolio Manager will be net 30 from the time an invoice is submitted to Con Edison. Invoices shall be created using the Payment Recommendation form generated by the AMV Solution Provider.
- D. To encourage natural gas savings in Westchester during the peak period, natural gas savings that occur in Westchester during January and February will receive the Gas Kicker (2x Payment/therm).
- E. Payment for projects with approved Non-Routine Adjustments (NRA) will follow the process in the Attachment F: Measurement and Verification (M&V) Plan.

Non-Routine Events (NRE)

- A. Portfolio Manager acknowledges that the M&V Plan will govern the processes for handling Non-Routine Events (NRE) and Non-Routine Adjustments (NRA). Portfolio Manager should adhere to the requirements of documentation and reporting for NREs in accordance with this agreement. The M&V plan is subject to revisions during the Pilot. Portfolio Manager will be notified prior to any changes being finalized.
- B. Portfolio Manager shall be responsible for providing all relevant information and supporting possible NRE investigations by the Evaluation Contractor and shall act in good faith supporting activities outlined in the M&V Plan.
- C. Any Projects in the Portfolio Manager's Portfolio with reported NREs that have not been approved will not be included in an applicable Payment Recommendation until resolved.
- D. If a Customer implements renewable technologies, fuel switching to non-metered fuel, or the addition of, or intentional increase of, a secondary heating system (non-gas/electric), during their enrollment in the P4P Pilot, the Portfolio Manager shall notify NYSERDA and Con Edison.
- E. Clean energy solutions installed by Customers during this Pilot that are not part of the Portfolio Manager package will be treated as NREs. Portfolio Manager shall not discourage adoption of these additional clean energy solutions (e.g. solar PV).

Performance Terms

- A. Portfolio Manager acknowledges that energy savings will be calculated using CalTRACK version 2.0 as implemented by the AMV Platform managed by NYSERDA. Energy savings as calculated by the AMV Platform will form the Basis-of-Payment.
- B. Portfolio Manager acknowledges that minor platform software updates may be required throughout the Performance Period. If a major update is available to the platform to reflect a version change in the CalTRACK methods, Portfolio Manager will be able to opt into using the new version of the CalTRACK methods or continue using the version of the CalTRACK methods under which they contracted (CalTRACK version 2.0).
- C. Portfolio Manager shall acquire Projects and deliver associated metered energy savings in keeping with the proposed Bid Package Workbook, with regard to the targeted number of Customers, Portfolio EUL, and measures.
- D. Con Edison reserves the right to cancel the contract if Portfolio Manager is found to be misleading Customers, engaging in gaming practices, or malfeasance.

On an annual basis, one year from the contract start date, the actual Portfolio will be compared to the Agreement. NYSERDA, Con Edison and the Portfolio Manager will work together to review project pipelines and Portfolio performance. Contract modifications will be made if deemed necessary. The following shall apply:

- E. If at the end of Year of 1, the volume of Projects in the Portfolio is less than twenty-five percent (25%) of the proposed volume of Projects to be completed during the Implementation Period, then the contract may be cancelled.
- F. The Contract amount will be increased if energy savings achieved are greater than the Agreement.
- G. Inflated or unrealistic EUL values will not be permitted. Therefore, if the Portfolio weighted average EUL (based on data submitted by the Portfolio Manager) changes more than ten percent (10%) from the Bid submission, the contract amount and Payment/Energy Unit rates will be adjusted to reflect the actual weighted average EUL of the measures installed. These adjustments will be based on the following formulas:

1. New contract value = revised annual total savings * revised weighted average EUL * contracted Levelized Cost
2. New Payment/Energy Unit rate = new contract value/(3 * revised annual total savings)

All payments are performance-based and the Portfolio Manager is not entitled to receive their entire contract value if savings are not delivered. The following may affect performance payments:

- H. Application of non-routine adjustments. The process for this is outlined in the M&V Plan - Attachment F.
- I. Achieving greater or fewer electric or gas savings than proposed.

Customer Engagement

- A. Portfolio Manager shall obtain Customer authorization to allow the AMV Platform to access utility usage records through the Green Button Connect Process and obtain Customer authorization for NYSERDA and Portfolio Manager to access and record project data on the AMV Platform, by using standardized language provided by Con Edison in a web-based form (Attachment J).
- B. To promote a positive, transparent customer experience, Con Edison and NYSERDA reserve the right to review the customer project agreement(s) to prevent predatory practices, mal-intent, unfair or price discriminatory offerings. Con Edison reserves the right to modify/cancel the contract if there is a persistent pattern of customer complaints.
- C. Portfolio Manager shall ensure Customer is presented with the customer project agreement and customer authorization (Attachment J) and can ask for clarifications.
- D. Portfolio Manager shall institute a consumer protection policy which, at a minimum, includes customer dispute protocols and customer data protection terms. Con Edison reserves the right to review this consumer protection policy.

Implementation

- A. Portfolio Manager shall oversee all Contractor(s) and implementation activities.
- B. Portfolio Manager shall select and partner with Contractor(s), if necessary, for all related services including project installation, marketing and Customer acquisition. Should a Contractor(s) change, Con Edison must be notified, and the Contractor must adhere to contracted and agreed-upon terms and conditions.
- C. Portfolio Manager shall hold and maintain appropriate licenses required by the state of New York, Contractors' State License Board to perform the class and type of work required, and if applicable, ensure that any Contractor(s) meet the same requirement.
- D. Portfolio Manager and/or its Contractor(s) shall complete work in accordance with all building codes and confirm all state and local permit and licensing requirements are followed. The Portfolio Manager must also ensure that proper building science techniques are followed for each measure installed, proper health and safety requirements are followed, and be prepared to provide proof, if requested, of compliance as applicable.
- E. Portfolio Manager shall develop Quality Management Plan before Pilot launch and implement accordingly to verify the quality and accuracy of the reported project details; Portfolio Managers are required to perform random inspections (minimum sample size calculation detailed under QA/QC in the RFP). Portfolio Manager shall investigate and inspect projects that exhibit unusual and extreme savings patterns.

- F. Portfolio Manager and its Contractor(s) shall not employ any Con Edison or Orange and Rockland (O&R) employee to perform services hereunder without the prior written permission of Con Edison.

Marketing

- A. Portfolio Manager may leverage Con Edison's co-branding support and/or use the Business Energy Pro name in outreach efforts, including marketing materials such as brochures, direct mail, presentations, websites, etc. but use of Con Edison's logo and/or Business Energy Pro affiliation language requires Con Edison review and approval. Per Con Edison's standard practice, a response will be given within 30 business days.
- B. Contractor participation agreements shall include language specifying strict adherence to Con Edison marketing policies and shall be made available to Con Edison for review and approval prior to contract execution.
- C. Portfolio Manager must notify Con Edison by email 30 days prior to executing any marketing to Customers to allow for the coordination of marketing activities. All marketing materials must be approved by Con Edison prior to the public distribution.

Data

- A. Portfolio Manager and Contractor(s) must collect, store, and transfer Customer Information in accordance to the uniform business practices and requirements outlined in the [Data Security Agreement \(DSA\) and Self Attestation](#).
- B. Portfolio Manager is responsible for maintaining data integrity and security of customer information in the CRM system, and must obtain Customer authorization (Attachment J) prior to sharing any Personal Identifiable Information with any external entities.
- C. Where there is conflict or inconsistency between the Data Security Agreement and the terms and conditions provided here, the DSA shall take precedence and govern unless specifically stated.
- D. Data Security Agreement paragraph 12 (Cybersecurity Insurance Required) and 15 (Payment) are hereby waived.

Terms and Conditions

Portfolio Manager must agree to perform in accordance with the following:

- [Standard Terms and Conditions for Professional Services Contracts](#)
- [Appendix A – Required Clauses and Certifications](#)
- [Gift Policy and Unlawful Conduct](#)
- [Vendor Risk Assessment Checklist](#)