

Smart Home Rate – Program Participation Terms and Conditions (“Terms and Conditions”)

Last updated March 9, 2020

I. Terms and Conditions; Voluntary Participation

- (a) Thank you for your interest in the Smart Home Rate Program (the “**Program**”) that is being offered by Consolidated Edison Company of New York, Inc. (“**CECONY**”) and Orange and Rockland Utilities, Inc. (“**O&R**”). Your electric utility provider, whether CECONY or O&R, as applicable, is referred to in these Terms and Conditions as “**Utility**”. Utility may also be referred to herein as “**we**”, “**our**” and “**us**.”
- (b) Your participation in the Program is expressly conditioned on your acceptance of these Terms and Conditions. Once you enroll in the Program through the online enrollment process, meet the eligibility criteria set forth as part of these Terms and Conditions, and accept these Terms and Conditions, you will be considered a “**Participant**” as referred to herein. “**You**” and “**your**” is a reference to you as a Participant. Your participation in the Program is completely voluntary. Therefore, if you do not agree with any of these Terms and Conditions, including the Privacy Policies referenced below, please do not participate in the Program.
- (c) We reserve the right to modify these Terms and Conditions at any time. We will promptly notify you via email of any modification to these Terms and Conditions and will make the current version of these Terms and Conditions available for viewing at the following web address:
https://www.smarthomerateprogram.com/Content/Programs/CONED/documents/Smart-Home-Rate-Program_Terms-and-Conditions.pdf.

Your continued participation in the Program will constitute your agreement to, and acceptance of, all modifications to these Terms and Conditions.

II. Enrollment Eligibility; Term

- (a) To participate in the Program you must meet all of the following eligibility criteria: you must (i) reside in and own a single-family home in the Program Service Territory (defined below) at the service address associated with your Utility service account (your “**Residence**”) and be a customer of Utility, (ii) not have a photovoltaic solar generation system installed at your Residence, (iii) have central, ducted air conditioning (“**CAC**”) at your Residence, (iv) have two or fewer Smart Thermostats (defined below) controlling your Residence’s CAC system, (v) have Advanced Metering Infrastructure (“**AMI**”) at your Residence that was installed at least one year prior to the Program Start Date (defined below), (vi) have access to a computer, smart phone or other mobile device with internet access, (vii) not, during your participation in the Program, receive electricity at your Residence from a third party energy supplier (i.e., an energy service company) and (viii) not participate in any other utility load control or demand response program.
- (b) By agreeing to and accepting these Terms and Conditions, you are representing to Utility that you (i) meet all of the eligibility criteria described in this Section II, (ii) have

read these Terms and Conditions, (iii) are legally competent to agree to and accept these Terms and Conditions, (iv) are the customer of record at your Residence, and (v) are authorized to approve participation in the Program at your Residence.

- (c) These Terms and Conditions shall remain in full force and effect from the date of your acceptance hereof through the earlier to occur of (i) the end of the Program Period (defined below) or (ii) earlier termination of the Program or your participation in the Program as further described in these Terms and Conditions (the “**Term**”).
- (d) The “**Program Service Territory**” consists of (i) with respect to customers of CECONY, Richmond County, New York and Westchester County, New York and (ii) with respect to customers of O&R, Orange County, New York and Rockland County, New York.

III. Information about the Program

- (a) Description of the Program.
 - i. The Program is intended to help you manage energy use and costs with a new electric rate tied to the cost of electricity when you use it (the “**SHR Rate**”). The SHR Rate will vary based on demand for electricity across Utility’s Program Service Territory. On certain days during June through September during the Program Period, Utility may notify you that there will be a several hour period when Utility expects high demand for electricity (each, an “**Event**”). Utility will notify you of an Event by email on the day prior to such Event. In order to participate in the Program, you must agree to receive email notifications of Events for the duration of the Program Period. We may also contact you about the Event by text. Utility will provide you with a Smart Thermostat incorporating Uplight, Inc.’s smart home software known as the Orchestrated Energy platform (“**OE**” or the “**OE Platform**”) to optimize and automate CAC loads in your home. More information regarding the SHR Rate and its impact on you as a Participant in the Program can be found at <https://www.coned.com/FreeSmartThermostat> or <https://www.oru.com/FreeSmartThermostat>. The Smart Thermostat provided to you by Utility will be integrated with the CAC system at your Residence.
 - ii. In order to implement the Program, Utility will directly or indirectly engage agents, subcontractors, suppliers and service providers (including without limitation Uplight, Inc. and ICF Resources, LLC) (collectively, the “**Utility Designees**”). Your rights and obligations with respect to Utility Designees are set forth in these Terms and Conditions.
- (b) Expected Program Timeline. Utility expects the Program to commence on May 15, 2020 (the “**Program Start Date**”) and continue until July 15, 2022 (the “**Program End Date**”). Utility reserves the right to change the Program Start Date or the Program End Date. Should Utility change either the Program Start Date or the Program End Date, Utility will notify you via email. The period of time between the actual Program Start Date and Program End Date is referred to in these Terms and Conditions as the “**Program Period**”.
- (c) Description of Smart Thermostat.

- i. The smart thermostat that will be provided by Utility in connection with the Program will be the Emerson Sensi Touch (provided that if for technical reasons encountered during installation this model cannot be utilized at your Residence you will be provided with the Emerson Sensi WiFi) (as applicable, the “**Smart Thermostat**”). You hereby agree that when the Smart Thermostat is installed and commissioned at your Residence you will install the Smart Thermostat manufacturer’s application and accept any related terms and conditions of the manufacturer that relate to the Smart Thermostat. Such terms and conditions shall be in addition to, and not in lieu of, these Terms and Conditions.
 - ii. You hereby acknowledge and agree that, in addition to and not in limitation or replacement of Section XI below, Utility is not the manufacturer of the Smart Thermostat and is not responsible for its performance.
- (d) Additional Details regarding Participation in the Program.
- i. In connection with your participation in the Program, you unconditionally authorize Utility to change the rate you pay for electric service to reflect the SHR Rate for the duration of your Rate Period. For more information about the SHR Rate, see Rider AB at <https://www.coned.com/external/cerates/documents/elecPSC10/electric-tariff.pdf> or Rider J at <https://www.oru.com/external/orurates/documents/ny/ny-electric-tariff.pdf>. As used in these Terms and Conditions, your “Rate Period” begins on the first day of your first billing period after the Program Start Date, and continues until the earlier of (i) the date that is twenty-four (24) months thereafter or (ii) your participation in the Program is terminated pursuant to Section VI. The end of your Rate Period shall in no event occur after the Program End Date.
 - ii. By participating in the Program, you grant Utility and the Utility Designees the right to remotely access and control the Smart Thermostat, which will allow Utility or Utility Designee to remotely change the temperature set point of your Smart Thermostat. You may override this temperature set point at any time you desire by turning the Smart Thermostat to a different temperature or using the other methods enabled by the Smart Thermostat manufacturer. You acknowledge that overriding the remotely designated temperature set point(s) of your Smart Thermostat may result in an increase in the amount charged by Utility for your electricity usage.
 - iii. During and after your participation in the Program, you may be asked to participate in follow up surveys, studies, audits, evaluations or verifications conducted by Utility or the Utility Designees in connection with the Program. While we hope that you choose to participate in these surveys, your participation will be completely voluntary. You will be eligible to receive cash rewards (up to \$60) for participating and sharing feedback related to the Program as part of these surveys, studies, audits, evaluations or verifications.
- (e) Price Guarantee. If you continue to participate in the Program for no less than twelve (12) months after the commencement of your Rate Period, Utility will provide you with a credit following this twelve (12)-month period related to your participation in the Program for the difference, if any, between (i) the amount you paid for electricity usage based on the SHR Rate applicable to you during the first twelve (12) months of the Program (as a result of your participation in the Program) in excess of (ii) the amount

you would have paid for the same amount of electricity usage under Utility's then-current tariff that would have otherwise applied to you during the first twelve (12) months of the Program (if you had not participated in the Program), determined on a total bill basis inclusive of any increase in rates and charges (the "**Price Guarantee**"). Your failure to participate in the Program for no less than twelve (12) months after the commencement of your Rate Period will render you ineligible to receive the Price Guarantee. The Price Guarantee does not apply to any portion of your Rate Period other than the initial twelve (12) months of your Rate Period.

IV. Ownership of Smart Thermostats

- (a) All right, title and interest in and to the Smart Thermostat will transfer to you upon your receipt of the Smart Thermostat. Such right, title and interest in the Smart Thermostat shall remain yours during and after your participation in the Program.
- (b) You acknowledge and agree that, if selected as a Participant in the Program, Utility will provide the Smart Thermostat to you for your use at your Residence in connection with the Program during your Rate Period.
- (c) You agree not to remove, tamper with, disable or damage the Smart Thermostat during the Term. Any failure to comply with these obligations will be at your sole risk for any damage that may result, including damage to the Smart Thermostat or your Residence or injury to any person (including death). You further agree to not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Smart Thermostat, the software embedded therein, including but not limited to the OE Platform.

V. Installation, Commissioning and Maintenance of the Smart Thermostat

- (a) After your enrollment in the Program, installation of the Smart Thermostat may occur in one of two ways:
 - i. You may select to have the Smart Thermostat directly installed by a Utility Designee by selecting direct installation during the online enrollment process. If you select direct installation, Utility will arrange for the delivery, installation and commissioning of the Smart Thermostat at your Residence.
 - ii. You may also select to self-install the Smart Thermostat. If you choose self-installation, Utility will ship you the Smart Thermostat, all necessary installation equipment, Program information (including information regarding the removal, handling and disposal of any thermostat present at your Residence and containing mercury that will be replaced by the Smart Thermostat), and a dedicated toll free number for technical support. If you cannot, or decide not to, self-install the Smart Thermostat after consultation with the technical support line, the technical support technician will transfer you to a Utility Designee to schedule in-home service for installation and commissioning of the Smart Thermostat.
 - iii. During your Rate Period, Utility and the Utility Designees will provide Smart Thermostat repair or replacements. You can call the toll-free customer support line for the Program at 1-888-871-0345 with any issues related to your Smart Thermostat, and a Utility Designee will provide technical support with respect to

connectivity, software (including, but not limited to, the OE Platform), or hardware issues. If your Smart Thermostat issue cannot be addressed remotely, a Utility Designee will be dispatched to troubleshoot the Smart Thermostat at your Residence. If your Smart Thermostat is determined to be defective a Utility Designee will coordinate with the Smart Thermostat manufacturer to obtain the necessary repairs or replacement of your Smart Thermostat.

- iv. The procurement, delivery, installation (including, but not limited to, any services provided by a Utility Designee with respect to the removal, handling and disposal of any thermostat present at your Residence, whether or not containing mercury and replaced by the Smart Thermostat (the **"Participant Thermostat"**)) and commissioning, operation and maintenance (during your Rate Period) of the Smart Thermostat by Utility will be free of charge to you.
- (b) You hereby consent to the installation (including, but not limited to, any services provided by a Utility Designee with respect to the removal, handling and disposal of any Participant Thermostat) and continued operation of the Smart Thermostat at your Residence. You agree to (i) cooperate with Utility and all Utility Designees in connection with the installation (including, but not limited to, any services provided by a Utility Designee with respect to the removal, handling and disposal of any Participant Thermostat), commissioning and ongoing maintenance (remote or otherwise) of the Smart Thermostat during the Term and (ii) allow Utility and all Utility Designees to access your Residence in connection with the Program as further specified in these Terms and Conditions.
- (c) At the end of your Rate Period, you will be responsible for any and all costs and expenses related to the Smart Thermostat and the use, operation and maintenance thereof (including any software related thereto) and Utility shall have no further liability in respect thereof for any reason whatsoever.

VI. Program Cancellation; Customer Termination and Withdrawal

- (a) Cancellation by Utility. Utility reserves the right to cancel the Program at any time for any reason or for no reason. If Utility elects to cancel the Program, we will send you an e-mail notice indicating the cancellation of the Program and date on which the Program will terminate.
- (b) Termination for Participant Default. Utility reserves the right to immediately terminate your participation in the Program due to any fraudulent activity or actions in violation of these Terms and Conditions. If Utility elects to so terminate your participation, we will send you an e-mail notice regarding such termination and the provisions of Section VI(d) will apply.
- (c) Participant Option to Withdraw. Your participation in the Program is completely voluntary so you are free to withdraw from the Program at any time. If you choose to withdraw from the Program you will not be entitled to re-apply to join the Program. Upon Utility's receipt of such notice, the provisions of Section VI(d) will apply. If you transfer ownership of your Residence or rent your Residence to any other person during the Term, then you will be deemed to have withdrawn from the Program and the provisions of Section VI(d) shall apply.

(d) Effects of Participant Termination or Withdrawal.

- i. Upon the earliest to occur of: (A) Utility's termination of the Program in accordance with Section VI(a), (B) Utility's termination of your participation in the Program in accordance with Section VI(b) and (C) your withdrawal from the Program in accordance with Section VI(c), continued collection of data from the Smart Thermostat and operation of the OE Platform with respect to the Smart Thermostat will cease within ten (10) business days after such cancellation, termination or withdrawal, as applicable.
- ii. Upon the termination of your participation in the Program for any reason, the rate you pay for electricity usage will revert to the applicable rate under Utility's then-current tariff that applies to you, commencing with your last billed-to date prior to termination.
- iii. Whether your participation in the Program is terminated in accordance with Section VI(a), (b), (c), or otherwise, you will retain ownership of the Smart Thermostat.

VII. Data Collection; Privacy. Please see CECONY's Privacy Statement which is available at <https://www.coned.com/en/conedison-privacy-statement> and O&R's Privacy Statement which is available at <https://www.oru.com/en/privacy-statement> (the "**Privacy Policies**") for further information on how Utility collects and may use and share your information.

VIII. Taxes. You are responsible for paying all taxes, if any, associated with your receipt of the Smart Thermostat or any other thing of value in connection with the Program.

IX. Intellectual Property Ownership. Any and all intellectual property developed by Utility or any Utility Designee, including modifications, enhancements, or changes to its or their products (including the Smart Thermostats and all software incorporated into the foregoing, including, but not limited to, the OE Platform) is and will remain solely owned by Utility or the Utility Designees, as applicable. This includes technology developed that may be as a result of feedback provided by you as part of your involvement in the Program.

X. Participant Representations and Consent

- (a) You represent and warrant that you have provided accurate information in your application to the Program and that you will promptly notify Utility of any changes to that information. You are responsible for ensuring that we have your current e-mail address and telephone number on file. You should inform us of any changes to your e-mail address or phone number by contacting info@SmartHomeRateProgram.com or 1-888-871-0345.
- (b) Utility will not be liable for any losses resulting from unauthorized access to or use of the Smart Thermostat or any software incorporated into the foregoing (including, but not limited to, the OE Platform), and you may be liable to us or other parties due to any such unauthorized access or use.
- (c) BY PARTICIPATING IN THE PROGRAM, YOU HEREBY EXPRESSLY (I) CONSENT TO THE INSTALLATION OF THE SMART THERMOSTAT AT YOUR RESIDENCE

(INCLUDING, BUT NOT LIMITED TO, ANY SERVICES PROVIDED BY A UTILITY DESIGNEE WITH RESPECT TO THE REMOVAL, HANDLING AND DISPOSAL OF ANY PARTICIPANT THERMOSTAT), (II) PERMIT UTILITY AND THE UTILITY DESIGNEES TO VIEW AND USE THE DATA AND INFORMATION COLLECTED BY THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM), AS MORE PARTICULARLY DESCRIBED IN THESE TERMS AND CONDITIONS AND THE UTILITY PRIVACY POLICIES REFERENCED ABOVE AND (III) AGREE NOT TO PARTICIPATE IN THE PROGRAM OR USE THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM) IN ANY WAY THAT IS ILLEGAL, FRAUDULENT OR ABUSIVE, INCLUDING TO HARASS, THREATEN, ABUSE, DEFAME OR SLANDER ANY INDIVIDUAL.

XI. Warranty Disclaimer

- (a) NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UTILITY IS PROVIDING THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM) AND ALL SERVICES RELATED TO THE PROGRAM, INCLUDING BUT NOT LIMITED TO ANY SERVICES PROVIDED BY A UTILITY DESIGNEE WITH RESPECT TO THE REMOVAL, HANDLING AND DISPOSAL OF ANY PARTICIPANT THERMOSTAT, TO YOU ON AN "AS-IS" BASIS, WITH ALL FAULTS, ERRORS AND DEFECTS AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND BY UTILITY OR ANY UTILITY DESIGNEE. IN CONNECTION WITH THE FOREGOING, UTILITY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. UTILITY DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM THE USE OF THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM). UTILITY DOES NOT MAKE ANY WARRANTY THAT ANY SOFTWARE INCORPORATED IN THE SMART THERMOSTAT (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM) WILL BE UNINTERRUPTED, FREE OF VIRUSES OR OTHER HARMFUL CODE, TIMELY, SECURE, OR ERROR-FREE.
- (b) YOU ACKNOWLEDGE AND AGREE THAT UTILITY DOES NOT GUARANTEE ENERGY COST SAVINGS OR OTHER BENEFITS ARISING FROM THE PROGRAM.
- (c) ALL INFORMATION PROVIDED IN THE PROGRAM MATERIALS, INCLUDING INFORMATION REGARDING THE REMOVAL, HANDLING OR DISPOSAL OF THERMOSTATS CONTAINING MERCURY, IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND. SOME OF THE INFORMATION INCLUDES LINKS TO WEBSITES OWNED BY THIRD PARTIES. THE CONTENT OF SUCH THIRD PARTY SITES IS NOT WITHIN UTILITY'S CONTROL, AND UTILITY

DISCLAIMS ANY AND ALL RESPONSIBILITY FOR THE INFORMATION OR CONTENT ON THIRD PARTY WEBSITES. ALL INFORMATION PROVIDED IN THE PROGRAM MATERIALS IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE. UTILITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, REGARDING ITS ACCURACY, COMPLETENESS, LEGALITY, RELIABILITY OR SUITABILITY TO YOUR PARTICULAR CIRCUMSTANCES. UTILITY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF WHATEVER NATURE (DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER) WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, WHICH MAY ARISE AS A RESULT OF YOUR USE OF (OR INABILITY TO USE) THE INFORMATION.

XII. Limitation of Liability

- (a) TO THE FULLEST EXTENT PERMITTED BY LAW, NONE OF UTILITY AND ITS AFFILIATED ENTITIES AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, SUCCESSOR OR ASSIGNS (COLLECTIVELY, THE “**PROGRAM OPERATORS**”) WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY IN CONNECTION WITH, ARISING FROM OR RELATED TO THE PROGRAM OR THE INSTALLATION OR USE OF THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM) OR THE REMOVAL, HANDLING AND DISPOSAL OF ANY PARTICIPANT THERMOSTAT REPLACED BY THE SMART THERMOSTAT AT YOUR RESIDENCE, EVEN IF A PROGRAM OPERATOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION AND WAIVER WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY.

- (b) WITHOUT LIMITING THE FOREGOING, YOU AGREE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TO IRREVOCABLY AND UNCONDITIONALLY RELEASE AND FOREVER DISCHARGE THE PROGRAM OPERATORS FROM ANY AND ALL LIABILITIES ARISING FROM OR RELATED TO (I) THE DESIGN, INSTALLATION, OPERATION, PERFORMANCE AND MAINTENANCE OF THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM) AND (II) ANY DAMAGE, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE, ARISING FROM OR RELATED TO THE SMART THERMOSTAT AND ALL SOFTWARE INCORPORATED INTO THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE OE PLATFORM) OR THE REMOVAL, HANDLING AND DISPOSAL OF ANY PARTICIPANT THERMOSTAT REPLACED BY THE SMART THERMOSTAT, EXCEPT, IN ANY CASE, TO THE EXTENT CAUSED BY THE PROGRAM OPERATORS’ NEGLIGENCE OR WILLFUL MISCONDUCT.

- (c) YOU ALSO AGREE THAT IN NO EVENT SHALL THE PROGRAM OPERATORS BE RESPONSIBLE FOR PROBLEMS, DAMAGES OR LOSSES CAUSED BY YOU, THIRD PARTIES, OR BY AN ACT OF GOD.
- (d) YOU AGREE THAT YOU WILL NOT INITIATE, AND HEREBY WAIVE ANY RIGHT TO INITIATE, ANY LAWSUIT OR CLAIM AGAINST ANY PROGRAM OPERATOR IN CONNECTION WITH, ARISING OUT OF OR RELATED TO THE PROGRAM AFTER THE DATE THAT IS ONE (1) YEAR AFTER THE EARLIEST TO OCCUR OF: (A) THE EXPIRATION OF THE PROGRAM PERIOD (OR EARLIER CANCELLATION OF THE PROGRAM BY UTILITY IN ACCORDANCE WITH SECTION VI(a)), (B) UTILITY'S TERMINATION OF YOUR PARTICIPATION IN THE PROGRAM IN ACCORDANCE WITH SECTION VI(b) AND (C) YOUR WITHDRAWAL FROM THE PROGRAM IN ACCORDANCE WITH SECTION VI(c).

XIII. Indemnification. You will indemnify, defend and hold the Program Operators harmless from any claims arising out of or related to (a) your breach of these Terms and Conditions, (b) your self-installation of the Smart Thermostat, and removal, handling and disposal of any Participant Thermostat replaced by the Smart Thermostat, at your Residence, or (c) any actual or alleged misuse or fraudulent use of the Smart Thermostat or any software incorporated into the foregoing (including, without limitation, the OE Platform), including, without limitation, the infringement of any third party's intellectual property rights or other rights, such as personal or privacy rights. You shall be responsible for any costs incurred by the Program Operators, including, but not limited to, reasonable attorneys' fees and court costs in connection with any such claims.

XIV. Force Majeure. Without limiting any other provision of these Terms and Conditions, Utility shall not be in default, and shall not be deemed to be in default, under these Terms and Conditions by reason of delay or the failure or inability to perform its obligations hereunder where the said delay, failure or inability is due to any cause which is unavoidable or beyond the reasonable control of Utility, including without limitation any act of God or other cause which frustrates the performance of these Terms and Conditions.

XV. Governing Law. These Terms and Conditions and any disputes related to them or the Program shall be governed by applicable federal law and the laws of the State of New York, excluding its conflicts of law provisions.

XVI. Assignment. Utility is permitted to assign these Terms and Conditions, in whole or in part, to any person, at any time, and without notice to you. You may not assign these Terms and Conditions.

XVII. Entire Agreement. These Terms and Conditions, including the Privacy Policies and any other documents or policies incorporated by reference herein, constitute the entire agreement between you, on the one hand, and Utility, on the other hand, with respect to the Program and supersede all prior or other arrangements, understandings, negotiations and discussions, whether oral or written, with respect to such subject matter.

XVIII. Waiver/Severability. No waiver of any provision of these Terms and Conditions shall be deemed or constitute a waiver of any other provision of or any subsequent breach of these Terms and Conditions. No waiver shall be valid unless made in a writing signed by the party granting the waiver. If any provision in these Terms and Conditions is declared invalid or

unenforceable, then such provision shall be severed from the remainder of these Terms and Conditions, which will otherwise remain in full force and effect.

XIX. No Third Party Beneficiaries. These Terms and Conditions are for the benefit of Utility and its successors and assigns with respect to your obligations under these Terms and Conditions and for your benefit with respect to your rights under these Terms and Conditions. Except for the Program Operators, there are no third party beneficiaries under these Terms and Conditions and these Terms and Conditions will not be deemed to confer upon or give to any other person any claim or other right or remedy, other than the Program Operators under Section XII of these Terms and Conditions.