

TERMS AND CONDITIONS
FOR
PERFORMANCE OF PROFESSIONAL SERVICES
FOR
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

October 1, 2007

TERMS AND CONDITIONS FOR PERFORMANCE
OF PROFESSIONAL SERVICES

1. **Definitions.** The following terms as used herein shall have the meanings stated:
 - "Con Edison" - Consolidated Edison Company of New York, Inc.
 - "Contractor" - The contractor that agrees to provide the services specified in the Contract.
 - "Contract" - All documents comprising the agreement between Con Edison and the Contractor to perform the services, including but not limited to these terms and conditions. (The words "hereof", "herein", "hereto" and "hereunder" shall be deemed to refer to the Contract.)

2. **Amendments.** No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of each party.

3. **Warranties.** The Contractor warrants that services furnished hereunder shall be rendered competently by qualified personnel in accordance with generally accepted practices. Should any failure to meet any of the warranties stated herein appear within one (1) year from the date that this Contract terminates or expires, the Contractor shall upon notice by Con Edison reperform the services not conforming to the foregoing warranty promptly and without expense to Con Edison. In the event of failure of the Contractor promptly to remedy as aforesaid any breach of warranty, Con Edison may correct the deficiencies and charge the Contractor the cost thereof. The aforesaid warranty shall survive acceptance of and payment for the services furnished hereunder. After any such services have been redone pursuant to the foregoing warranties, they shall be subject anew to the foregoing warranties.

4. **Changes.** Con Edison reserves the right at any time to make changes in the services to be performed or in any specifications and data incorporated in the Contract. Any such changes shall be directed in writing. If such change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the contract price or schedule, or both. Any claim by the Contractor for adjustment under this clause shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison, without prejudice to its right to obtain an equitable adjustment.

5. **Subcontracting.** The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the work to be subcontracted and the subcontractor. The Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Con Edison's approval of a subcontractor shall not create any contractual relationship between Con Edison and the subcontractor. The word "subcontractor" as used herein shall not include Contractor's subsidiaries and/or affiliates.

6. **Assignment.** The Contractor shall not assign the Contract or any part of it to any entity other than an affiliate or subsidiary of Contractor without the prior written consent of Con Edison, and any assignment made without such consent shall be void.
7. **Confidentiality.** All specifications, drawings, technical information and reports furnished by Con Edison or furnished or prepared by the Contractor in connection with the Contract shall, at the written request of Con Edison or if the documents are so marked, be held confidential by the Contractor and shall not be disclosed to any other person or used other than in connection with the performance of the Contract. Such documents shall be delivered to Con Edison upon completion of performance.
8. **Excusable Delay.** Excusable Delay shall be defined as delay caused by force majeure, Con Edison, or any third party not under the direction or control of the Contractor. Notwithstanding any other provision of the Contract, Contractor shall not be held responsible or liable for any Excusable Delay. Con Edison shall not be liable for any additional costs incurred as a result of such Excusable Delay.
9. **Termination for Convenience.** Con Edison may for any reason whatsoever, including its own convenience, by fifteen (15) days written notice to the Contractor terminate the Contract, in whole or in part, without liability to the Contractor except to the extent of compensation due for work performed. In the event of such termination, Con Edison shall pay the Contractor for services performed and received prior to termination date, an amount that is equitable in light of the Contract price. The Contractor shall take all reasonable steps to minimize any termination charges of its subcontractors as well as its own termination costs. If payments made under the Contract have exceeded the termination amount, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve the Contractor of any obligation which may arise out of services performed prior to termination. In no event shall Con Edison be liable to the Contractor for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other business.
10. **Cancellation for Default.** In the event the Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, by five (5) business days written notice, to cancel the Contract, in whole or in part, for default. The Contractor shall be deemed to be in default if it is in default of any of its obligations under the Contract or by a statement or conduct indicates that it will not perform one or more of such obligations (whether or not the time has yet arrived for their performance) other than an obligation that has become impossible to perform. In the event of cancellation for default, Con Edison shall have all rights and remedies provided by law and under the Contract. In the event that the Contractor demonstrates to Con Edison that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience, and the rights and obligations of the parties shall be governed accordingly.

11. **Ownership of Documents.** Except as otherwise provided in the Contract, all drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs, and documentation, and all copies thereof, furnished or prepared by the Contractor, regardless of any statements thereon or therewith purporting to make them confidential or the subject of a loan or to limit the use Con Edison may make of them, and all such things supplied to the Contractor by Con Edison hereunder, shall be the property of Con Edison, to use in any way it sees fit and disclose to others in connection with such use, and shall be delivered or returned to Con Edison upon completion of performance hereunder. Upon the request of Con Edison, the Contractor shall execute any assignments or other documents which Con Edison deems necessary to copyright such material in Con Edison's name.
12. **Compliance with Laws.** The Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder. The Contractor shall provide Con Edison, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article 12. Without limiting the generality of the foregoing, the Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Terms and Conditions as if fully set forth therein.
13. **Right to Audit.** In the event the Contract now provides or in the future is modified to provide for performance, or any part thereof, on a cost-reimbursable, time-and-materials, or similar basis, or if payment on such basis is to be made in the event of Termination for Convenience under Article 9, the Contractor shall maintain detailed books, records and accounts covering costs incurred or, as applicable, time and materials expended and shall make said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of the Contract and for a period of three (3) years after final payment under the Contract. If audit discloses that Con Edison has paid the Contractor for any costs alleged by the Contractor to have been incurred but which were not in fact incurred or for any time and materials which were not expended, the Contractor shall refund to Con Edison an amount equal to such payment plus interest thereon.
14. **Insurance.** The Contractor shall maintain liability insurance and professional liability insurance in amounts of at least \$3,000,000 per occurrence for the duration of the Contract, and Con Edison shall be named as an additional insured on Contractor's liability policy for the duration of this Contract. In addition, Contractor shall comply with any stricter or additional insurance requirements contained in any documents comprising the Contract.
15. **Relationship of Parties.** The Contractor shall be an independent contractor in the performance of the services hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the parties, or joint employers of the Contractor's employees. Unless specially provided elsewhere in the Contract, nothing contained in the Contract is intended for the benefit of any third parties.

16. **Entire Agreement.** The Contract, as it may be amended in accordance with Article 2 hereof, Amendments, contains the entire agreement between Con Edison and the Contractor. If any portion of the Contract is or becomes legally invalid or unenforceable, other than a provision relating to the Contractor's compensation, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.
17. **New York Law.** The Contract shall be construed and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the state of New York.
18. **Effect of Con Edison Approval.** The Contractor's obligations under the Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve the Contractor's work hereunder. Any approval by Con Edison of any services, documents or other things done or furnished or proposed by the Contractor shall be deemed merely as indicating that at that time of approval Con Edison was not aware of any reason for objecting. Any failure of a Con Edison representative to object to a non-conformity of any work with all the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver or acceptance of the non-conformity.
19. **Waiver.** Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of the Contractor's duties or obligations nor any failure of Con Edison to insist on strict performance by the Contractor of this Contract or to assert Con Edison's rights in any or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.
20. **Submission to Jurisdiction/Choice of Forum.**
 - A. The Contractor hereby irrevocably submits to the jurisdiction of the courts of the state of New York with regard to any controversy arising out of or relating to the Contract. The Contractor agrees that service of process on the Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to the Contractor at the address shown in the Contract or at the address of any office actually maintained by the Contractor, or by actual personal delivery to the Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.
 - B. The Contractor consents to the selection of the New York State and the United States courts situated within the city of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract.

21. **Payment.**

- A. Unless otherwise specified in the Contract, payment shall be made by Con Edison to the Contractor within thirty (30) days after receipt and processing of invoices.
- B. Invoices (the originals) shall be submitted after the rendering of the services for which payment is to be made, in such detail and with such supporting documentation as may reasonably be required by Con Edison for tax and regulatory purposes. If the Contract provides for services to be rendered on an hourly rate basis, invoices shall include the number of hours worked and the hourly rate as well as the total amount invoiced, and shall be accompanied by any other data reasonably required by Con Edison.
- C. Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in the progress of the services.

22. **Taxes.**

- A. **Sales Tax.** Except as otherwise provided in the Contract, the price does not include any federal, state or local sales, use, or other similar tax which may now or hereafter be applicable to the purchase by Con Edison of the services furnished hereunder, Con Edison agrees to pay or reimburse the Contractor for such tax.
- B. **Payroll Taxes and Contributions.** The Contractor assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the work to be performed.

23. **Time of Performance.** The Contractor shall perform the services to be furnished in accordance with any schedule of performance stated herein. Time is of the essence of the Contract and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance.

24. **Key Personnel.** Personnel assigned to perform services hereunder who are designated as “key” personnel in the Contract shall not be removed from such assignments without the prior written consent of Con Edison. Con Edison shall have the right to approve replacements for key personnel.

25. **Infringement.** If the Contractor provides any goods, designs, processes, or works of authorship (including computer programs), covered by a patent, copyright, trademark, or other proprietary right, the Contractor shall, if it does not own such right, secure permission for the use of such right as completed by the Purchase Order. The contractor shall indemnify, defend, and hold Con Edison harmless against any liability arising from a claim against Con Edison that the services rendered hereunder or any goods, designs, processes or works of authorship furnished in connection therewith infringe any proprietary right. The contractor shall pay all costs and

expenses incurred by Con Edison in connection with any such claim, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. In the event that the use of any goods, designs, processes or works of authorship furnished hereunder is enjoined, the Contractor shall promptly, at its own expense, either procure for Con Edison the right to continue using it, replace it with a noninfringing item of equal performance and quality or modify it so that it becomes noninfringing.

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