CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

STANDARD TERMS AND CONDITIONS

FOR

PROFESSIONAL SERVICES CONTRACTS

July 1, 2012
As modified October 23, 2017 for Staff Augmentation Contracts
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definitions</td>
<td>1</td>
</tr>
<tr>
<td>2. Contract Formation; Amendments</td>
<td>1</td>
</tr>
<tr>
<td>3. Payment</td>
<td>2</td>
</tr>
<tr>
<td>4. Taxes</td>
<td>2</td>
</tr>
<tr>
<td>5. Time of Performance</td>
<td>3</td>
</tr>
<tr>
<td>6. Excusable Delay</td>
<td>3</td>
</tr>
<tr>
<td>7. Warranties</td>
<td>3</td>
</tr>
<tr>
<td>8. Changes</td>
<td>3</td>
</tr>
<tr>
<td>9. Personnel</td>
<td>4</td>
</tr>
<tr>
<td>10. Subcontracting</td>
<td>4</td>
</tr>
<tr>
<td>11. Assignment</td>
<td>5</td>
</tr>
<tr>
<td>12. Confidentiality</td>
<td>5</td>
</tr>
<tr>
<td>13. Infringement</td>
<td>6</td>
</tr>
<tr>
<td>14. Insurance</td>
<td>6</td>
</tr>
<tr>
<td>15. Termination for Convenience</td>
<td>7</td>
</tr>
<tr>
<td>16. Cancellation for Default</td>
<td>7</td>
</tr>
<tr>
<td>17. Ownership of Documents and Materials; Ownership of Intangible Property</td>
<td>8</td>
</tr>
<tr>
<td>18. Compliance with Laws</td>
<td>10</td>
</tr>
<tr>
<td>19. Set-Off</td>
<td>10</td>
</tr>
<tr>
<td>20. Investigation and Audit</td>
<td>10</td>
</tr>
<tr>
<td>21. Effect of Con Edison Approval</td>
<td>10</td>
</tr>
<tr>
<td>22. Conflicting Documents; Headings</td>
<td>11</td>
</tr>
<tr>
<td>23. Waiver</td>
<td>11</td>
</tr>
<tr>
<td>24. Relationship of Parties</td>
<td>12</td>
</tr>
<tr>
<td>25. Entire Agreement</td>
<td>12</td>
</tr>
<tr>
<td>26. Governing Law</td>
<td>12</td>
</tr>
<tr>
<td>27. Waiver of Trial by Jury</td>
<td>12</td>
</tr>
<tr>
<td>28. Submission to Jurisdiction/Choice of Forum</td>
<td>12</td>
</tr>
<tr>
<td>29. Third Party Rights</td>
<td>13</td>
</tr>
<tr>
<td>30. Service Organization Control SSAE 16 SOC 1 Report</td>
<td>13</td>
</tr>
<tr>
<td>31. Enablement in the Procurement System</td>
<td>13</td>
</tr>
<tr>
<td>32. Gift Policy and Unlawful Conduct</td>
<td>13</td>
</tr>
<tr>
<td>33. Indemnification</td>
<td>15</td>
</tr>
</tbody>
</table>

Appendix A – Required Clauses and Certifications
STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES
CONTRACTS

1. **Definitions.** The following terms as used herein shall have the meanings stated:

"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 or its affiliate, Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" - The contract between Con Edison and the Contractor 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) these Standard 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. (The words "hereof", "herein", "hereto" and "hereunder" shall be deemed to refer to the Contract.)

2. **Contract Formation; Amendments.** A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, if Contractor's offer contains terms additional to or different from those on which requests for quotations were requested which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgment electronically of the Contract in the Procurement System or, if Contractor is not enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor’s commencement or continuation of the performance of services following its receipt of the Contract or such other writing, such performance of services signifying Contractor's acceptance of the terms thereof. No revision or modification of or amendment to the Contract shall be valid or binding unless in writing (electronically or in print form) and signed (electronically or in print form) by an authorized representative of Con Edison thereof.
3. **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 proper invoices with required supporting documentation.

   B. Invoices (the originals) shall be submitted to Con Edison’s Accounts Payable Department after the rendering of the services for which payment is to be made, in such detail and with such supporting documentation as may be required by the Contract or as may reasonably be required by Con Edison for tax and regulatory purposes. If the Contract provides for services to be rendered on a time-and-materials (“T&M”) basis, invoices shall include the number of hours worked and the hourly rate for each person performing services, as well as the total amount invoiced, and shall be accompanied by signed time sheets and any other data or supporting documentation 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.

   D. The acceptance by the Contractor of final payment, except for any express written reservation of rights, shall be and shall operate as a release of Con Edison from all claims of, and all liability to, the Contractor for all things done or furnished in connection with the Contract and for every act and neglect of Con Edison and others for whom Con Edison is or may be responsible relating to, or arising out of, the Contract. However, no payment, final or otherwise, shall operate to release the Contractor from any obligations under the Contract.

   E. Con Edison at any time may, after notifying the Contractor in writing, pay directly any unpaid claims against the Contractor based on services rendered hereunder, and in so doing Con Edison shall be conclusively deemed to be acting as the Contractor’s agent. Any payment made by Con Edison to discharge a claim against the Contractor shall be treated as a payment made under the Contract from Con Edison to the Contractor.

4. **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, and Con Edison agrees to pay or reimburse the Contractor for such taxes.
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 the state 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 services to be performed.

5. **Time of Performance.** The Contractor shall perform the services to be furnished in accordance with any schedule of performance stated herein. It is understood and agreed by the Contractor that **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. Receipt and acceptance by Con Edison of revised schedules from the Contractor during the performance of the services hereunder shall not be deemed a waiver of the Contract completion date.

6. **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.

7. **Warranties.** The Contractor warrants that services furnished hereunder shall be rendered competently by qualified personnel in accordance with generally accepted practices. The Contractor further warrants that services furnished hereunder shall meet any and all tests and conform strictly to all specifications and comply strictly with all performance requirements contained in the Contract. Should any failure to meet any of the warranties stated herein appear within one (1) year from the date that the 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 warranties 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. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

8. **Changes.** Con Edison reserves the right at any time to make changes in the services to be performed or in any specifications or data incorporated in the Contract. Any such changes shall be directed in writing (electronically or in print form). 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
Article 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. Any price increase or decrease or extension of time for performance shall not be binding on Con Edison unless evidenced by a Contract revision or modification signed and issued by Con Edison (electronically or print form).

9. Personnel. Personnel assigned to perform services hereunder who are specifically designated 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 such designated personnel. Contractor shall remove any personnel from performing services under the Contract as may be requested by Con Edison.

Contractor and its permitted subcontractors shall not employ any Con Edison or O&R employee to perform any services hereunder without the prior written permission of Con Edison. Further, neither Contractor nor any of its subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the subcontractors (as an employee or consultant or otherwise) within five years of such former employee’s separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee’s separation from Con Edison or O&R. For purposes of the preceding sentence, “administration of any contract, agreement or purchase order” shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed “administration of any contract, agreement or purchase order.”

10. Subcontracting.

A. 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; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved
subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval. Nothing contained herein shall create any contractual rights in any subcontractor against Con Edison. The Contractor shall cause all subcontracts applicable to the services furnished hereunder to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, the requirements relating to naming Con Edison, O&R and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the subcontractor as Con Edison and O&R have hereunder against the Contractor, and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

B. If the Contract is on a cost-plus or T&M basis and is in an amount exceeding $100,000 and Contractor enters into a subcontract with a subcontractor to whom Contractor is subcontracting all or any portion of the performance to be rendered hereunder on a cost-plus or T&M basis in an amount exceeding $5,000, immediately after Contractor enters into such subcontract, Contractor shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Attention: Purchasing Department
Section Manager, Technology and Strategic Initiatives

11. 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. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor’s obligations under the Contract.

12. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Contract shall, except to the extent indicated in writing by Con Edison or O&R, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the services hereunder, and be delivered or returned to Con Edison or O&R upon completion of such performance. Contractor shall not use Con Edison’s or O&R’s name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Contract or for any other purpose without obtaining Con Edison’s, or with respect to O&R, O&R’s prior
written permission. The Contractor acknowledges that its violation of the provisions of this Article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this Article, in addition to its remedies at law.

13. **Infringement.** If the Contractor, in the performance of the Contract, employs, constructs or provides any goods, designs, processes, or works of authorship (including computer programs and documentation), covered by a patent, copyright, trademark, or other proprietary right, the Contractor shall, if it does not own such right, at its own expense, secure permission prior to its use under the Contract for the use of such right as contemplated by the Contract. The Contractor shall indemnify, defend, and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective officers, trustees, directors, agents, representatives, successors and assignees (each, an "Indemnified Party") harmless from and against any loss, liability, damage or expense arising out of or related to a claim against an Indemnified Party that the services rendered hereunder or any goods, designs, processes or works of authorship (including computer programs or documentation) furnished in connection therewith or resulting therefrom, infringe any patent, copyright, trademark or any other proprietary right. The Contractor shall provide for the defense of any such claim, and shall pay all costs and expenses incurred by an Indemnified Party in connection with any such claim, including compensation of experts and counsel and legal costs, and all damages and costs awarded against an Indemnified Party. 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 (or O&R, with respect to services ordered for O&R) the right to continue using them, replace them with a noninfringing item of equal performance and quality or modify them so that they become noninfringing.

14. **Insurance.** The Contractor shall maintain Commercial General Liability Insurance and Professional Liability Insurance in amounts of not less than $3,000,000 per occurrence for the duration of the Contract and, with respect to the Professional Liability Policy, for at least three (3) years following final completion and acceptance of the services, and Contractor shall maintain such other limits and such additional insurance as may be required by the Contract. Con Edison, O&R and Consolidated Edison, Inc. shall be named as additional insureds on Contractor's Commercial General Liability policy with respect to the services hereunder and completed operations for the duration of the Contract. In addition, Contractor shall comply with any stricter or additional insurance requirements contained in any documents comprising the Contract. Contractor shall furnish Con Edison with a Certificate of Insurance covering all required insurance and stating that Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. are additional insureds with respect to the Commercial General Liability Insurance. All coverage of additional
insureds required hereunder shall be primary coverage and non-contributory as to
the additional insureds. All insurance required hereunder shall contain a waiver of
subrogation in favor of the additional insureds. Contractor shall, and shall cause
any subcontractor to, furnish Con Edison with written notice at least ten (10) days
prior to the effective date of cancellation of the insurance or of any changes in
policy limits or scope of coverage.

15. **Termination for Convenience.** Con Edison may for any reason whatsoever,
including its own convenience, terminate the Contract, in whole or in part, without
liability to the Contractor except as stated in this Article. In the event of such
termination, in full discharge of its obligations to the Contractor in respect of the
Contract and such termination, Con Edison shall pay the Contractor for services
performed and received prior to termination, 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 exceed the termination amount, the excess
shall be refunded promptly 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.

16. **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 written notice
to the Contractor, to cancel the Contract, in whole or in part, for default. The
Contractor shall be deemed to be in default hereunder 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 performance thereof). In the event of cancellation for default, Con
Edison shall have all rights and remedies provided by law and under the Contract.
In addition, in such event, Con Edison may retain from any money otherwise due
due for services rendered prior to cancellation, an amount which Con Edison
determines is adequate to cover all damages resulting from the Contractor's
default. If such costs and damages exceed the unpaid balance, Contractor shall
pay the difference to Con Edison. Upon cancellation for default of the Contract
under this Article, Con Edison shall be entitled to cancel for default any or all other
contracts between the Contractor and Con Edison, and such cancellation shall be
governed by this Article. Also, a cancellation for default of any other contract
between Contractor and Con Edison shall entitle Con Edison to cancel for default
the Contract under this Article. 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 pursuant to Article 9 of these
Standard Terms and Conditions, and the rights and obligations of the parties shall
be governed accordingly.
17. **Ownership of Documents and Materials; Ownership of Intangible Property.**

   **A.** With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with services ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

   **B.** With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with services ordered for O&R (hereinafter “O&R Materials”), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable subject matter, such O&R Materials and the copyrights relating thereto shall be considered “works made for hire” under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all
intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive,
royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

18. **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. 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 Standard Terms and Conditions as if fully set forth therein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the federal government.

19. **Set-Off.** Con Edison shall have the right to set off against any sums due the Contractor under the Contract, any claims Con Edison may have against the Contractor under the Contract or any other contract between Con Edison and the Contractor without prejudice to the rights of the parties in respect of such claims.

20. **Investigation and Audit.** The Contractor hereby agrees to cooperate fully with any investigation, audit or inquiry conducted by Con Edison or O&R or by any federal, state or local government agency or authority relating to any aspect of the Contract or any of the services under the Contract and the Contractor shall make all of its books, records, and accounts available for inspection in connection therewith. Moreover, 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, T&M, or similar basis, or if payment on such basis is to be made in the event of a Termination for Convenience under Article 15 of these Standard Terms and Conditions, 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, O&R, the investigating governmental agency or authority, and their respective authorized representatives during the term of the Contract and for a period of six (6) years after final payment under the Contract. If an investigation, audit or inquiry discloses that Con Edison has paid the Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, or for any other costs that were improperly charged, the Contractor shall refund to Con Edison an amount equal to such payment.

21. **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 any failure by the Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance, and shall not release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

22. **Conflicting Documents; Headings.** To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that the Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

23. **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 the Contract or to assert Con Edison’s rights in any one or more instances, shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of a breach hereof, shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. 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.

24. **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.

25. **Entire Agreement.** The Contract, as it may be amended in accordance with Article 2 (Contract Formation; Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and the Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, 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.

26. **Governing Law.** The Contract shall be construed and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state.

27. **Waiver of Trial by Jury.** Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

28. **Submission to Jurisdiction/Choice of Forum.**

   A. The Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester for Rockland County 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 state and federal courts situated within the City of New York or Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. The Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.
29. **Third Party Rights.** O&R is a third party beneficiary of the Contract and may enforce the Contract. The other Con Edison affiliates and other non-parties referenced in Articles 10, 13, 14, 20, 29 and 32 of these Standard Terms and Conditions are third party beneficiaries of the Contract and may enforce those Articles and any articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

30. **Service Organization Control SSAE 16 SOC 1 Report.** If Contractor performs services for Con Edison pursuant to this Contract that that Con Edison determines have an impact on the financial reporting controls of Con Edison or fall within the purview of Con Edison's Sarbanes-Oxley compliance efforts, then: (i) Contractor shall provide Con Edison with a copy of the latest SSAE 16 SOC 1 (“SOC 1”) Report concerning Contractor’s operations, systems, controls and procedures prior to commencing performance under this Contract; and (ii) during the term of this Contract, Contractor shall be obligated to have a new SOC 1 performed and to furnish a new SOC 1 Report concerning such new audit to Con Edison no later than twelve (12) months after the date of the SOC 1 Report that was previously furnished to Con Edison. Contractor will provide Con Edison with a bridge letter covering any period of time between the date of the last SOC 1 Report furnished to Con Edison and termination of the Contract. All SOC 1 Reports shall reference the applicable Con Edison purchase order number and shall be sent to: Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, NY 10003, Attention: Auditing Department.

In the event a SOC 1 Report identifies any deficiencies in the Contractor's operations, systems, controls or procedures Contractor will immediately notify Con Edison and within five (5) business days submit a remediation plan for Con Edison’s review and approval. If the parties are not able to agree upon a remediation plan, Con Edison shall have the right to terminate the Contract.

As used herein, "SOC 1 Audit" means an audit performed in accordance with Statement on Auditing Standards for Attestation Engagements No. 16 by an independent auditor to verify whether the operations, systems, controls and procedures described by Contractor were suitably designed to meet specified objectives of such operations, systems, controls and procedures and were in place and operating effectively over a period of time that is typically at least a six month period.

31. **Enablement in the Procurement System.** In the event Contractor is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor shall promptly become enabled in the Procurement System.

32. **Gift Policy and Unlawful Conduct.** The Contractor is advised that it is a strict Con
Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively “Gift”), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee’s family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, and subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison’s list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contract between Con Edison and Contractor (including, but not limited to, the right to pay payments for services performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserve all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term “Con Edison” shall include all of Con Edison’s affiliates, including, but not limited to, O&R. Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

33. Indemnification. Indemnification. To the fullest extent allowed by law, the Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns (each an “Indemnified Party”) from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, (i) for injury to or the death of persons or damage to property, including the property of Con Edison
or O&R, (ii) statutory or administrative fines, penalties or forfeitures (including but not limited to, fines, penalties and forfeitures against Con Edison or any of its affiliates relating to joint employer liability) resulting, in whole or in part, from, or connected with, the performance of the Contract by the Contractor or any subcontractor, or any of their agents, servants, representatives or employees, and including claims, losses, damages and liabilities arising from the partial or sole negligence of Con Edison and non-parties to the Contract (including O&R), or (iii) any claim asserted by an employee, agent, contractor or representative of the Contractor against Con Edison or another Indemnified Party as a joint employer.

The Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against the Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor’s employees notwithstanding the provisions of Section 11 of the Workers’ Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers’ Compensation Law insofar as such claims are asserted by Con Edison or O&R against the Contractor.