

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

STANDARD TERMS AND CONDITIONS

FOR

PURCHASE OF EQUIPMENT

July 1, 2012

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STANDARD TERMS AND CONDITIONS FOR PURCHASE OF EQUIPMENT

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 equipment and any associated services to be furnished to Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").
- "Seller" - The seller who is a party to the Contract with Con Edison.
- "Contract"- - The contract between Con Edison and Seller consisting of: (a) a Blanket Purchase Agreement (BPA) or Contract Purchase Agreement (CPA) and/or a Con Edison 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 and drawings. The words "hereof," "herein," "hereto" and "hereunder" shall be deemed to refer to the Contract.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Seller of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Seller is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Seller's offer; provided, however, if Seller's offer contains terms additional to or different from those on which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgment electronically by Seller of the Contract in the Procurement System or, if Seller is not enabled in the Procurement System, by the signing by Seller of the Contract or a copy of the Contract or such other writing as maybe issued by Con Edison (or another document expressing Seller's acceptance thereof), or Seller's commencement or continuation of its performance following its receipt of the Contract or such other writing, such performance signifying Seller's acceptance of the terms thereof.

3. Amendments. No revision, modification of or amendment to the Contract shall be valid or binding unless in writing (electronic or print form) and signed electronically or in writing by an authorized representative of Con Edison.

4. Firm Price. Unless otherwise expressly provided herein, the prices stated in the Contract are firm and are not subject to increase.

5. Payment

- A. Unless otherwise specified in the Contract, payment shall be made by Con Edison to Seller 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 delivery of the equipment or payment of the services to which the payment applies, in such detail and with such supporting documentation as required by the Contract or as may reasonably be required by Con Edison for tax and regulatory purposes. Proofs of costs shall be submitted for cost reimbursable items. If the contract provides for any services to be rendered on an hourly rate 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 delivery or other performance.
- D. The acceptance by Seller 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 Seller 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 Seller from any obligations under the Contract.
- E. Con Edison at any time may, after notifying the Seller in writing, pay directly any unpaid claims against Seller based on services rendered hereunder, and in so doing Con Edison shall be conclusively deemed to be acting as Seller's agent. Any payment made by Con Edison to discharge a claim against the Seller shall be treated as a payment made under the Contract from Con Edison to Seller.

6. 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 equipment or services furnished hereunder, and Con Edison agrees to pay or reimburse Seller for any such tax. Con Edison shall have the right to direct the basis on which any such taxes shall be paid or contested and to control any contest and shall reimburse the Seller for any interest, penalties or expenses Seller may be required to pay on account of any such direction or contest. Conducting any hearings or litigation regarding a tax dispute shall be Con Edison's responsibility, but Seller shall cooperate and assist Con Edison therewith.
- B. Payroll Taxes and Contributions. Seller 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 performance of the Contract.
- C. Import Taxes (Tariffs and Duties). The prices include any and all import taxes, including, but not limited to, regular, special, countervailing and antidumping duties imposed at any time on the equipment purchased hereunder, whether denominated duties, tariffs, surcharges, imposts, tolls or otherwise. Seller shall indemnify and hold harmless Con Edison and its affiliates (including O&R) from and against any liability arising out of the imposition of any such import taxes. In the event that a notice of the initiation of an antidumping or countervailing duty investigation or proceeding is published in the Federal Register relating to the kind of equipment and the country of origin involved in the purchase hereunder, Con Edison shall have the right at any time thereafter to cancel the purchase by written notice, without incurring any liability therefor. The exercise or nonexercise of this right of cancellation shall not affect any right hereunder to be indemnified and held harmless.

7. Time of Performance. Seller shall deliver the equipment and perform any services to be furnished in accordance with the delivery dates and any schedule of performance stated herein. It is understood and agreed by Seller 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 Seller during the performance hereunder shall not be deemed a waiver of the contract completion date.

8. Excusable Delay. Seller shall be excused for any delay in performance hereunder arising from a cause beyond its control which it could not by the exercise of due diligence have avoided, including an act of any governmental authority, an act of God,

extraordinary weather conditions, flood, an accident such as a fire or explosion not due to the negligence of Seller, a strike not caused or prolonged by an unfair labor practice of Seller, public disorder or riot, a failure of public transportation facilities., and inability of Con Edison to provide access due to plant malfunctions. Delay in Seller's receipt of subcontracted supplies or services, even for reasons beyond the control of the subcontractors, shall not be excusable delay hereunder if the supplies or services are available to Seller from another source. Seller shall give written notice and full particulars of the cause of delay relied upon within 48 hours after its occurrence, and thereafter shall update Con Edison on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Seller's sole and exclusive remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

9. Suspension. Con Edison shall have the right, for its convenience and by written notice, to suspend all or part of Seller's performance hereunder at any time. Seller shall, as soon as possible, resume any suspended performance when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by the suspension. If such suspension continues for an unreasonable period, Seller shall be entitled to an adjustment in the Contract price to cover any additional out-of-pocket costs (exclusive of overhead or costs resulting from loss of efficiency) which Seller establishes to the satisfaction of Con Edison were incurred by Seller solely by reason of the suspension, provided, however, that such entitlement is conditioned upon the Seller's notifying Con Edison in writing within fifteen (15) days of the suspension that additional costs will or may be incurred thereby and upon Seller's making claim therefor in writing within thirty (30) days of Con Edison's notice to resume work. Delay caused by Con Edison's act or failure to act shall not be deemed a suspension within the meaning of this article and shall not entitle the Seller to receive any additional costs.

10. Warranties. Seller warrants that the equipment furnished hereunder will be new and free from defects in title, design, material, fabrication and workmanship, will conform strictly to applicable specifications, drawings, and other descriptions incorporated herein, will meet all tests, will comply strictly with all performance requirements contained in the Contract, will be suitable for its intended purpose and of merchantable quality, and will comply with and be usable in compliance with all applicable laws and regulations. Seller further warrants that any services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practices. Should any failure to meet any of the warranties stated herein appear within twelve (12) months after commencement of commercial operation of the equipment or eighteen (18) months after acceptance of the equipment by Con Edison, whichever first occurs, Seller shall, upon notice from Con Edison, repair or replace the equipment and reperform the services not conforming to the foregoing warranties, promptly and without expense to Con Edison. In the event of a failure of Seller to promptly remedy any breach of warranty, Con Edison may correct the deficiencies and charge Seller for the cost thereof. The aforesaid warranties shall survive acceptance of, and, payment for equipment and services furnished hereunder.

After any equipment or services have been repaired, replaced or redone pursuant to the foregoing warranties, they shall be subject anew to the original 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.

11. Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any specifications, drawings and data incorporated herein, the method of shipment or the time of delivery. Any such changes shall be directed in writing. If any such change causes an increase or decrease in the cost of or the time required for performance hereunder, an equitable adjustment shall be made in the contract price or schedule, or both. Any claim by the Seller 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 Seller 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 an equitable adjustment in respect thereof. Any price increase or decrease or extension or acceleration 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 in print form).

12. Time and Material and Cost Reimbursable Work

- A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of work done on a time and material or other cost reimbursable basis.
- B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless the Seller obtains the prior written consent of Con Edison's duly authorized representative.

If Seller should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Seller without recourse to Con Edison.

- C. For time and material work, Seller shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.
- D. All work performed on a time and material basis shall be subject to the Article 10 (Warranties) above.

- E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

13. Claims

- A. The only claims that may be made by Seller are claims for (i) providing services or materials beyond the scope of the Purchase Order that are not covered by a written and signed change order (hereafter “Non-Contract Work”), and (ii) the increased cost of performing under the Contract caused by Con Edison’s breach of the Contract (hereafter “Increased Costs”), except that, as set forth in Article 8, no claims for damages or additional costs on account of delay shall be permitted.
- B. For each claim for Non-Contract Work, as defined in A(i) of this Article, Seller must give written notice to Con Edison’s designated representative within five (5) days of when the Seller began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in A(ii) of this Article, Seller must give written notice to Con Edison’s designated representative within five (5) days of Seller’s discovery of Con Edison’s breach. The notice must identify the breach with the following particularity: for an act of Con Edison, identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Seller believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date the Seller learned of the misrepresentation.
- C. For claims for which Seller has given timely notice, Seller must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph B of this Article, Seller must begin submitting weekly detailed itemizations of such costs to Con Edison.
 - (i) For each claim for Non-Contract Work, as defined in A(i) of this Article, these detailed records shall include:

- (a) The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and
 - (b) The nature and quantity of any materials, plant and equipment furnished or used on connection with the performance of such work and from whom purchased or rented.
- (ii) For each claim for Increased Costs, as defined in A(ii) of this Article, these detailed records must include:
- (a) The date the Increased Costs were incurred;
 - (b) The name, title, trade local, and number of the workers who performed the work whose costs were increased;
 - (c) The price in Seller's bid for the performance of the work that had its cost increased, the actual cost to Seller to perform such work, and the amount of the Increased Costs or which Seller claims Con Edison is responsible for; and
 - (d) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.
- D. Seller's failure to provide timely notice of a claim, as required by paragraph B of this Article, or to collect, segregate, maintain, and make available to Con Edison documentation of all costs sought in the claim, as required in paragraph C of this Article, or to timely submit such costs on a weekly basis, as required by paragraph C of this Article, shall be deemed a conclusive and binding determination by the Seller that neither Seller nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Seller nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

14. Inspection and Tests. Con Edison shall have the right to inspect any and all records of Seller or its subcontractors whenever Con Edison believes that this is necessary to assure it that equipment to be furnished hereunder is being produced and will be produced in full compliance with the requirement of the Contract and on schedule. In addition, Seller shall provide, and shall cause its subcontractors to provide, access to factories and shops at all reasonable times for Con Edison to inspect work in progress. Con Edison shall have the right to be present and witness tests relating to the equipment purchased hereunder. Con Edison, in addition, shall have the right to require additional tests to be performed at all reasonable times and

places. Any special tests ordered in writing by Con Edison will be paid for by Con Edison, provided that if such tests reveal nonconformity with the Contract requirements, the cost of such tests shall be borne by Seller. No inspection, failure to inspect or waiver of inspection by Con Edison or anyone acting on its behalf shall relieve Seller of its obligation to furnish equipment and services fully in accordance with the requirements of the Contract. All equipment is received subject to inspection and approval, notwithstanding prior payment, it being understood that payment does not constitute acceptance. All rejected equipment will be held at Seller's expense and risk, pending Seller's disposition instructions.

15. Subcontracting. Seller 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 Seller 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. Seller shall cause all subcontracts applicable to performance hereunder to contain provisions which require the subcontractor to provide the same insurance coverage as is required of Seller, and comply with the other requirements relating to insurance as are required of Seller hereunder, including , but not limited to, naming Con Edison, O&R, Consolidated Edison, Inc., and Seller as additional insureds. Subcontracts shall provide for Seller the same rights against the subcontractor as Con Edison and O&R have hereunder against Seller and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

16. Assignment. Seller shall not assign the Contract or any of its rights under the Contract 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, Seller shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for each of Seller's obligations under the Contract.

17. 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 Seller or its subcontractors in connection with the Contract shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Contract, and be delivered or returned to Con Edison (or O&R with respect to Equipment ordered for O&R) upon completion of such performance. Seller 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 its work under the Contract or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior written permission. Seller 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, Seller 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 their remedies at law.

18. Infringement. If Seller, in the performance of the Contract, employs, constructs or provides any goods, design, process, material, tool, equipment or work of authorship (including computer programs and documentation) covered by a patent, copyright, trademark or other proprietary right, the Seller shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. The Seller shall indemnify and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns (each, an Indemnified Party) harmless from and against any loss, liability, damage or expense arising from or relating to a claim, suit or proceeding brought against an Indemnified Party and any liability arising therefrom based on a claim that the any equipment, designs, processes or works of authorship (including computer programs and documentation) provided hereunder infringe any patent, copyright, trademark or any other proprietary right. Seller shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded therein against an Indemnified Party. Con Edison shall notify Seller of any such claim, suit or proceeding in writing and give the Seller authority, information and assistance (at the Seller's expense) for the defense thereof. In the event that the use of any equipment, designs, processes or works of authorship furnished hereunder is enjoined, the Seller shall promptly, at it own expense, either (a) procure for Con Edison (or O&R, with respect to equipment for O&R) the right to continue using such equipment, designs, processes or works of authorship or (b) with the approval of Con Edison, (i) replace them with noninfringing equipment, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

19. Indemnification. To the fullest extent allowed by law, Seller 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, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons or damage to property, including the property of Con Edison or O&R, or statutory or administrative fines, penalties or forfeitures, resulting, in whole or in part, from, or connected with, the performance of the Contract by Seller, any subcontractor, their agents, servants, representatives or employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Seller expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Seller in connection with claims against Con Edison or O&R for injury and/or death to Seller's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and

indemnification against employers, and Seller 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 Seller.

20. Insurance. Seller shall, at its own expense, procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance

- (i) Workers' Compensation Insurance as required by law.
- (ii) Employers' Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupational diseases (with a limit of not less than \$1,000,000 per employee).
- (iii) Where applicable, insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$5,000,000 per occurrence for bodily injury or death and not less than \$1,000,000 per occurrence for property damage or a combined single limit of not less than \$5,000,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. (If the equipment delivered or any part of the performance hereunder involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Seller shall be for not less than \$7,500,000 per occurrence for bodily injury or death and \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 per occurrence.) Policy deductibles shall be subject to Con Edison's prior written approval.

The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds with respect to the performance hereunder and completed operations. There shall be no exclusion for claims by Seller's

or any subcontractor's employees against Con Edison or O&R based on injury to Seller's or any subcontractor's employees.

- C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Seller or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.
- D. Where performance involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by Seller or any subcontractor, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.
- E. For asbestos abatement and lead abatement work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Seller shall require the subcontractor to name Seller, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.
- F. In the event the performance hereunder includes any engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the performance to be furnished under the Contract.

Seller 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. 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.

At least three days prior to commencing performance hereunder Seller shall furnish Con Edison with copies of the policies specified in paragraphs B and E of this Article and Certificate(s) of Insurance covering all required insurance, signed by the insurer or its authorized representative, certifying that the required insurance has been obtained and will not be cancelled or altered without at least ten (10) days' prior

written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. are additional insureds with respect to all coverages enumerated in paragraph B of this Article with respect to the performance hereunder and completed operations. Con Edison shall have the right, upon request, to require the Seller to furnish Con Edison with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

To the fullest extent allowed by law, Seller agrees that this is an insured contract and that the insurance required herein is intended to cover each of Con Edison and O&R for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the performance hereunder.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Seller shall be deemed to have assumed tort liability for any injury to any employee of Seller, Con Edison or O&R arising out of the performance of the work, including injury caused by the partial or sole negligence of Con Edison or O&R and notwithstanding any statutory prohibition or limitation of Seller's contractual obligations hereunder.

Certificates of insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, 17th Floor
New York, NY 10003

Attention: Purchasing Department
Supplier Management Group (SMG)

21. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by written notice to Seller terminate the Contract, in whole or in part, without liability to Seller except as stated in this Article. In the event of such termination, in full discharge of its obligations to Seller in respect of the Contract and such termination, Con Edison shall pay Seller for equipment delivered or specially manufactured and services performed prior to termination, an amount which is equitable in light of the Contract price. Seller shall take all reasonable steps to minimize any termination charges of its subcontractors and suppliers as well as its own termination costs. If payments made under the Contract exceed such termination amount, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve Seller of any obligation which may arise out of equipment delivered or services performed prior to termination. In no event shall Con Edison be liable to the Seller for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead, or lost opportunities to obtain other sales.

22. Cancellation for Default. In the event Seller is in default of any of its obligations under the Contract, Con Edison shall have the right, by written notice to Seller, to cancel the Contract, in whole or in part, for such default. Seller shall be deemed to be in default hereunder if Seller is in default of any of its obligations under the Contract or if Seller 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 hereunder, 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 for equipment delivered and services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damages resulting from Seller's default. If such costs and damages exceed the unpaid balance, Seller 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 Seller and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Seller and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Seller demonstrates 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 21 of these Standard Terms and Conditions, and the rights and obligations of the parties shall be governed accordingly.

23. 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 Seller in connection with Work 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, Seller 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, Seller 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, Seller 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 Seller in connection with Work 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, Seller 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, Seller 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, Seller 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 Seller, 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. Seller shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Seller 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, Seller shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Seller 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 Seller, and Seller 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. Seller 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 Seller, 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. Seller shall disclose immediately to O&R all O&R Work Product upon its conception. Seller 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, Seller shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Seller 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 Seller, and Seller 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. Seller 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.

24. Con Edison Performance. Con Edison shall perform any action required of it by this Contract in order to enable Seller to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action by Seller for damages, in contract or in tort, or entitle Seller to cancel or rescind the Contract or abandon its performance. Unexcused nonperformance by Con Edison shall, however, relieve Seller of its obligation to perform hereunder to the extent it prevents Seller from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Seller.

25. Compliance with Laws. Seller shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time when it renders to Con Edison any of the equipment or associated services ordered hereunder. Without limiting the generality of the foregoing, Seller 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 herein. It contains clauses applicable to, and

certifications required to be provided by, subcontractors of federal government contractors. In addition, if any of the equipment or services (or any portions thereof) provided hereunder are manufactured, assembled or performed in whole or in part in a country other than the United States, the Seller shall comply with all applicable laws, orders, regulations, ordinances, rules, and safety codes of the country and the state, city, province or other subdivision of the country where such manufacture, assembly or performance occurs. Con Edison may from time to time request Seller to provide Con Edison with the original or a copy of any and all permits, certificates, licenses, receipts and other evidence establishing its compliance with this Article, as well as a written certification, signed by an officer or other person of similar responsibility with the Seller, that certifies Seller's compliance with this Article.

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

27. Investigation and Audit. Seller hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of the Contract or the performance of the Contract, and Seller shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide for performance, or any part thereof, on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 9 (Suspension) or Article 21 (Termination for Convenience) of these Standard Terms and Conditions, Seller shall maintain detailed books, records and accounts covering costs incurred or, as applicable, time and materials used in connection therewith, 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 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 Seller for any costs which were not in fact incurred or for any time spent or materials used which were not in used or for any costs that were improperly charged, Seller shall refund to Con Edison an amount equal to such payment,

28. Required Approvals

- A. Seller will not be permitted to perform any field service work, including, but not limited to, inspection, installation, maintenance, and repair, until it has submitted to Con Edison and received approval of a site specific health, safety, and environmental plan.
- B. Where required by the Contract, Seller shall submit designated documents, such as drawings and process procedures, for review and

approval by Con Edison prior to fabrication. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to the implementation of any such changes or deviations.

29. Quality Assurance. To further assure compliance with warranties stated herein, Seller shall meet the quality assurance requirements stated in the Contract, to the extent any quality assurance requirements are set forth or incorporated herein.

30. Effect of Con Edison Approval. Seller'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 Seller's work hereunder, including, without limitation, documents such as drawings and written process procedures. Any approval by Con Edison of any goods, services, documents or other things done or furnished or proposed by the Seller shall be construed 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 Seller 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 Seller from the full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

31. Safeguards. Seller shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Seller shall cause all equipment and structures, the place of work and the ways and approaches thereto to meet the requirements of all public authorities. All equipment, tools, other aids and materials utilized by Seller shall have been tested and meet all applicable ANSI standards and legal requirements, shall be of high quality and in good working order. Seller shall be responsible for learning what all of these requirements are and the acceptable techniques for complying with them.

If in the opinion of Con Edison's authorized representative Seller's work practices or conditions created by Seller are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Seller shall not be entitled to any additional costs or time for performance due to such work stoppage.

If, when Con Edison's authorized representative is not present at a work site, a Con Edison employee directs Seller to discontinue an operation because it may be unsafe or illegal, Seller shall immediately halt the questioned operation and, if Seller disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Seller shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

32. Maintenance of Work Site. Seller shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not

interfere with the progress of any performance or work of any other sellers or contractors, clean up and remove frequently all refuse, rubbish, scrap materials, and debris so that at all times the work site shall present a neat, orderly and workmanlike appearance and, before final payment, remove all surplus material, falsework, and temporary structures. If in the opinion of Con Edison, Seller has failed to comply with any provisions of this Article, Con Edison may order any or all performance suspended until the condition is corrected, and costs associated therewith shall be borne by the Seller.

33. Vehicle Spills. Seller is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Seller shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

34. Protection of Persons and Property; Notice of Accidents

- A. When Seller performs hereunder, Seller shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. Seller shall at its own expense design, furnish, and erect such enclosures, barricades, platforms, scaffolds, planking of floor openings, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Seller shall, and shall cause any subcontractor, their agents, servants and employees, while on or about the work site, to observe and comply with all fire, safety, hazard, "No Smoking", and other rules and regulations prescribed by Con Edison or legally in effect at the time.
- B. Seller shall promptly report in writing to Con Edison all accidents whatsoever, and any claims made in connection therewith, arising out of or in connection with the performance of the Contract whether on or adjacent to the work site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage to property is caused, Seller shall immediately orally report the accident to Con Edison.

- C. If at any time or place a third party suffers personal injury (including death) or property damage for which Seller is legally liable, no provision of the Contract shall be construed as an agreement by Con Edison to assume all or any part of such liability or, if Con Edison is named or joined in any legal action or proceeding in connection therewith, to preclude, prejudice or limit Con Edison's right to receive indemnification or contribution from Seller.

35. Material Safety Data Sheets. Seller shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be contained within the equipment to be furnished. For this purpose, a toxic substance is any substance listed in the then latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete and return a MSDS promptly upon Con Edison's request shall be grounds for cancellation of the Contract for default.

36. 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, 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 Seller'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.

37. Transportation and Packaging. Unless specifically provided for in the Contract, Con Edison shall not be obligated to pay Seller for transportation, boxing, crating or other packaging.

38. Waiver. The acceptance of equipment or services or any part thereof, any payment therefor or any order or certificate issued under the Contract, any performance by Con Edison of any of Seller's duties or obligations, or any failure of

Con Edison to insist on strict performance by Seller of the Contract or to otherwise assert its rights in any one or more instances, shall not 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.

39. Relationship of Parties. Seller shall be an independent contractor in connection with its performance 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 Seller's employees.

40. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 hereof (Amendments) contains the entire agreement between Con Edison and Seller 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.

41. 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.

42. Waiver of Trial by Jury. Seller 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.

43. Submission to Jurisdiction/Choice of Forum

A. Seller hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Seller agrees that service of process on the Seller in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Seller at the address shown in the Contract or at the address of any office actually maintained by Seller, or by actual personal delivery to Seller. 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. Seller consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Seller also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

44. 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 15, 18, 19, 20, 34 and 46, 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.

45. Enablement in the Procurement System. In the event Seller 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), Seller shall promptly become enabled in the Procurement System.

46. Gift Policy and Unlawful Conduct. Seller 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, Seller, 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 purchase of equipment or any services to be provided under the Contract. Furthermore, Seller is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and Seller or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Seller represents, warrants, and covenants that Seller, its agents, employees, representatives 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, Seller shall be in default under the Contract and all other contracts between Con Edison and Seller and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Seller, (b) Con Edison may, in its sole discretion, remove Seller from Con Edison's list of qualified bidders, (c) Seller shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Seller (including, but not limited to, the right to payments for equipment furnished or work performed), and (d) Con Edison shall have no further obligations to Seller relating to such contracts. In addition, Seller 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 Seller 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 Seller under the Contract or any other contract between Con Edison and Seller during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves 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). Seller 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).

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