

STANDARD TERMS AND CONDITIONS

FOR

DEVELOPMENT OF SOFTWARE

FOR

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

October 1, 2007

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Standard Terms and Conditions for Development of Software  
for Consolidated Edison Company of New York, Inc.

1. Definitions

- "Con Edison" - Consolidated Edison Company of New York, Inc.
- "Vendor" - The company named on the face of the purchase order.
- "Agreement" - The agreement between Con Edison and Vendor, including the typewritten purchase order and all documents incorporated by reference therein. (The words "hereunder" and "herein" refer to the Agreement).
- "Licensed Software" - Pre-existing proprietary software, documentation and instruction materials acknowledged by Con Edison in writing to have been licensed and not sold to Con Edison hereunder.
- "Modifications" - Modifications to or enhancements of the Licensed Software needed to enable it to meet Con Edison's requirements hereunder.
- "Custom Software" - Any software (including documentation and instruction materials) developed by Vendor for Con Edison hereunder and not incorporating or modifying any Licensed Software.
- "Software System" - As defined in Article 2 hereof.

2. The Software System. Vendor shall develop for Con Edison a software system (the "Software System") which meets Con Edison's requirements as contained in the Agreement. The Software System shall consist of Custom Software and/or Licensed Software and Modifications. Vendor shall furnish Con Edison all source code associated with the Software System. Con Edison shall have title to all components of the Software System with the exception of Licensed Software. Upon the request of Con Edison, Vendor shall execute any assignments or other documents which Con Edison deems necessary to copyright such material in Con Edison's name.

3. Grant of License in Licensed Software

- A. Vendor hereby grants to Con Edison a nonexclusive royalty-free license in perpetuity to use Licensed Software. Licensed Software shall remain the property of Vendor; however, Con Edison shall have the right to disclose to third parties any information relating to

or contained in Licensed Software and to grant sublicenses to third parties to use or modify Licensed Software to the extent such disclosure or sublicensing is related to the conducting of Con Edison's business.

- B. Con Edison may use Licensed Software on any or all central processing units owned or controlled by Con Edison, at no additional cost hereunder.

4. Modifications and Custom Software. Licensor agrees to design, program, test and provide such Modifications and/or such Custom Software as will enable the Software System to meet Con Edison's requirements, including but not limited to those set forth herein and in the detailed design specifications developed hereunder. Modifications shall utilize methods and standards of design and coding consistent with those used in the Licensed Software.

5. Development, Implementation, and Acceptance

- A. The personnel provided by Vendor hereunder shall be fully qualified and shall have the technical and application skills needed to enable them to perform their duties hereunder. Vendor warrants that the services performed by these personnel shall be rendered competently in accordance with the best accepted practice. Vendor's named project manager shall devote his or her full-time efforts to the development of the Software System and shall be available on-site during testing and implementation of the Software System and at all other necessary times. Vendor shall provide sufficient staffing to enable the Software System to be installed in accordance with the schedule stated herein. Con Edison shall have the right to require Vendor to replace any personnel working on the project whom Con Edison deems to be unsatisfactory. In the event that Vendor's project manager ceases to be associated with Vendor, his or her responsibilities shall be assumed by an individual with equivalent qualifications, experience, and knowledge.
- B. Vendor shall provide all necessary instruction and training to enable Con Edison to supply input to and utilize output of the Software System, including but not limited to training on Con Edison's site.
- C. At least once a month, there shall be a meeting to discuss the progress of the project. At such meetings, the Vendor's project manager shall present a written report to Con Edison on project status and progress. The report shall include a summary of the accomplishments achieved and difficulties encountered during the

prior reporting period and the anticipated results during the next reporting period.

- D. Vendor agrees to meet the schedule of performance contained in the Agreement. Time is of the essence of the Agreement and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance.
- E. Vendor shall, with Con Edison's cooperation, develop detailed design specifications. Con Edison shall make available personnel knowledgeable in Con Edison operations for this purpose. The detailed design specifications shall include system flow charts, program descriptions, file layouts, report layouts and screen layouts. Documentation to be provided by Vendor shall include the detailed design specifications, program flow charts, file layouts, report layouts, screen layouts, program source code, user instruction manuals, and any other documentation specified in the Agreement.

6. Infringement Indemnification. Vendor shall indemnify and hold Con Edison harmless against any liability arising from a claim, suit or proceeding brought against Con Edison alleging that the Software System or any part thereof infringes any patent, copyright, trademark or any other proprietary right. Vendor 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 Con Edison. Con Edison shall notify Vendor of any such claim, suit or proceeding in writing and give Vendor authority, information and assistance (at Vendor's expense) for the defense thereof. In the event that the use of all or part of the Software System is enjoined, Vendor shall promptly, at its own expense, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing product of equal performance and quality, or (ii) modify it so it becomes noninfringing.

7. Confidentiality. All specifications, drawings, technical information, reports and other documents furnished by Con Edison in connection with the Agreement shall, at the written request of Con Edison or if the documents are so marked, be held confidential by the Vendor and not disclosed to any third party, be used by the Vendor only in connection with the performance of the Agreement, and be delivered to Con Edison upon completion of performance.

8. Virus Protection

- A. The Vendor must have a procedure in place to eliminate exposure of all Con Edison computers and networks to viruses.
- B. For Personal Computers (PCs), all diskettes used by the Vendor during development shall be tested every week using Viruscan or

any similar package approved by Con Edison. This shall include testing of all diskettes that are used for tests of parts and equipment and all diskettes that are used for installation of systems and for warranty service and repairs.

- C. The Vendor shall test the Software System for PC viruses before the system is delivered to Con Edison.
- D. If the Vendor discovers a PC virus at its facility, it shall notify Con Edison's designated representative no later than one-half hour after this discovery of the type of virus and which Con Edison hardware and software is affected.
- E. The Vendor's personnel shall, when using Con Edison facilities or equipment, use the procedures being used by Con Edison's own personnel to protect against exposure to viruses.

9. Changes. Con Edison reserves the right at any time to make changes in the Software System to be provided or in any specifications and data incorporated herein. 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 price or schedule, or both. Any claim by Vendor 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, Vendor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison.

10. Software Maintenance. Until acceptance of the Software System and for a period of one year thereafter, Vendor shall perform maintenance on the Software System, free of charge, to assure that the Software System meets Con Edison's requirements and is in conformance in all respects with the detailed design specifications and with the Agreement. Maintenance shall include corrections of errors or malfunctions of the Software System, additional Modifications to ensure compatibility of the System Software with Con Edison's needs, any programming required by changes in laws, and revisions and enhancements developed by Vendor following acceptance.

11. Payment

- A. Unless otherwise specified in the Agreement, payments shall be made by Con Edison to the Vendor within thirty (30) days after receipt and processing of invoices.
- B. Invoices (the originals) shall be submitted to the Accounts Payable Section of Con Edison's General Accounting Department in such

detail and with such supporting documentation as may reasonably be required by Con Edison for tax and regulatory purposes.

- C. Should the Agreement contain a schedule of payments, such schedule will be appropriately adjusted for any delays in the progress of the work.
- D. The acceptance by Vendor 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 Vendor for all things done or furnished in connection with the Agreement 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 Agreement. However, no payment, final or otherwise, shall operate to release Vendor from any obligations under the Agreement.

12. Taxes. Except as otherwise provided in the Agreement, the price does not include any federal, state or local sales, use, or other similar tax applicable to this transaction, and Con Edison agrees to pay or reimburse Vendor 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 Vendor for any interest, penalties or expenses Vendor may be required to pay on account of any such taxes or contest. Conducting any hearings or litigation regarding a tax dispute shall be Con Edison's responsibility, but Vendor shall cooperate and assist Con Edison therein.

13. Right to Audit. In the event that any work hereunder is performed 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, Vendor 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 and its authorized representatives during the term of the Agreement and for a period of six years after final payment under the Agreement. If audit discloses that Con Edison has paid Vendor for any costs alleged by Vendor to have been incurred but which were not in fact incurred or for any time and materials which were not used, Vendor shall refund to Con Edison an amount equal to such payment plus interest thereon.

14. Excusable Delay. Vendor 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, an accident such as a fire or explosion not due to the negligence of Vendor, a strike not caused or prolonged by an unfair labor practice of Vendor, and public disorder or riot, and a failure of public transportation facilities. Delay in Vendor's receipt of subcontracted supplies or services, even for reasons beyond the control of the subcontractor, shall not be

excusable delay hereunder if the supplies or services are available to Vendor from another source. Vendor shall give written notice and full particulars of the cause of delay relied upon as soon as possible after its occurrence. 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. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

15. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by written notice to Vendor terminate the Agreement, in whole or in part, without liability to Vendor except as stated in this Article. In the event of such termination, in full discharge of its obligations to the Vendor in respect of the Agreement and such termination, Con Edison shall pay Vendor for work done prior to termination an amount which is equitable in light of the contract price. The Contractor shall take all reasonable steps to minimize any termination charges of its subcontractors and suppliers, if any, as well as its own termination costs. If payments made under the Agreement exceed such termination amount, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve Vendor of any obligation which may arise out of work performed prior to termination. In no event shall Con Edison be liable to Vendor 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.

16. Cancellation for Default. In the event Vendor is in default of any of its obligations under the Agreement, Con Edison shall have the right, by written notice to Vendor, to cancel the Agreement, in whole or in part, for such default. Vendor shall be deemed to be in default hereunder if Vendor is in default of any of its obligations under the Agreement or, by a statement or conduct, it 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 the rights and remedies provided by law and under the Agreement. In addition, in such event Con Edison may retain from any money otherwise due for work done prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Vendor's default. In the event that Vendor demonstrates that a cancellation of the Agreement 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 15 hereof, and the rights and obligations of the parties shall be governed accordingly.

17. Compliance with Laws. Vendor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and codes applicable at the time of performance to work performed hereunder. Vendor 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, Vendor 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 articles entitled Equal Employment Opportunity, Disabled Veterans and Veterans of the Vietnam Era, Employment of the Handicapped, and Clean Air and Water.

18. Assignment. The Vendor shall not assign the Agreement or any of its rights under the Agreement without the prior written consent of Con Edison, and any assignment made without such consent shall be void.

19. Subcontracting. Vendor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or materials; and provided further, that the Vendor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Nothing contained herein shall create any contractual relationship between any subcontractor and Con Edison.

20. No Waiver. Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order or certificate issued under the Agreement nor any performance by Con Edison of any of Vendor's duties or obligations nor any failure of Con Edison to insist on strict performance by Vendor of this Agreement or to assert Con Edison's rights in any one or more instances shall constitute a waiver by Con Edison, either then or for the future. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

21. Amendments. No modification or amendment to the Agreement shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

22. Entire Agreement. The Agreement, as it may be amended in accordance with Article 21 hereof, Amendments, contains the entire agreement between Vendor and Con Edison. If any provision of the Agreement is or becomes legally invalid or unenforceable, the remainder of the Agreement shall not be affected thereby. Any prior or contemporaneous, oral or written understandings or agreements relating to the subject matter of the Agreement are merged herein.

23. New York Law/Submission to Jurisdiction. This Agreement shall be construed and the rights and liabilities of the parties hereto determined in accordance with the laws of the state of New York. Vendor hereby irrevocably submits to the jurisdiction of the courts of the state of New York with regard to any controversy arising out of or relating to the Agreement. Vendor agrees that service of process on Vendor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Vendor at the address shown in the Agreement or at the address of any office actually maintained by Vendor, or by actual personal delivery to Vendor. 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. Vendor consents to the selection of the New York State and the United States courts situated within the city of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Agreement.

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