

**STANDARD TERMS AND CONDITIONS**

**FOR**

**LICENSING OF SOFTWARE**

**TO**

**THE CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

October 1, 2007

**Standard Terms and Conditions for Licensing of Software  
to the Consolidated Edison Company of New York, Inc.**

1. **Definitions:**

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|--------------------------|---|---|
| "Con Edison"             | - | Consolidated Edison Company of New York, Inc.   |
| "Licensor"               | - | The company named on the face of the Con Edison purchase order.   |
| "Agreement"              | - | The agreement between Con Edison and Licensor, including the typewritten Con Edison purchase order and all documents incorporated by reference therein. (The words "hereunder" and "herein" refer to the Agreement).  |
| "Licensed Software"      | - | The software licensed hereunder in object code form and all updates and revisions thereof supplied by Licensor during the term hereof, and all permitted copies of the foregoing.                                     |
| "Licensed Documentation" | - | All documents, including but not limited to instructional material, furnished by Licensor relating to the Licensed Software.  |
| "Licensed Product"       | - | The Licensed Software and the Licensed Documentation.   |
| "Licensed CPU"           | - | Any central processing unit (including associated equipment) identified hereunder and any other central processing unit (including associated equipment) identified by Con Edison to Licensor during the term hereof. |

2. **Grant of License; Delivery.** Licensor hereby grants to Con Edison a nonexclusive

license in perpetuity to use the Licensed Software on the Licensed CPU during the term hereof and to use the Licensed Documentation during the term hereof. Con Edison may use the Licensed Software on a back-up CPU during any periods when the Licensed CPU is inoperable. The Licensed Product shall be delivered to Con Edison F.O.B. the destination designated by Con Edison.

3. Reproduction and Modification of Licensed Product

- A. Con Edison may reproduce the Licensed Product for use on the Licensed CPU. All copies of the Licensed Product shall contain the restrictive and proprietary notices appearing on or in the original Licensed Product provided to Con Edison.
- B. Con Edison may modify the Licensed Software and merge it into existing software; the Licensed Software so merged and modified shall continue to be subject to all of the terms and conditions of this Agreement.

4. Proprietary Information. Con Edison acknowledges Licensor's representation that the Licensed Software is the exclusive property of Licensor. Con Edison agrees not to disclose the Licensed Software to third parties without Licensor's written consent; provided, however, that Con Edison may disclose the Licensed Software to any third party furnishing goods or services to Con Edison who executes a nondisclosure agreement covering the Licensed Software.

5. Infringement Indemnification. Licensor shall indemnify and hold Con Edison harmless against any and all liability arising from a claim, suit or proceeding brought against Con Edison alleging that the Licensed Product or any part thereof infringes any patent, copyright, trademark or any other proprietary right. Licensor 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 Licensor of any such claim, suit or proceeding in writing and give Licensor authority, information and assistance (at Licensor's expense) necessary for the defense thereof. In the event that the use of all or part of the Licensed Product is enjoined, Licensor 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.

6. Software Maintenance. During the first year of this license, Licensor shall correct all errors, malfunctions and defects in the Licensed Product, provided it is given written notice thereof, and shall furnish Con Edison with all corrections and revisions to the Licensed Product made by Licensor.

7. Payment

- A. Unless otherwise specified in the Agreement, payments shall be made by Con Edison to Licensor 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 following receipt and acceptance of the Licensed Product 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 Licensor 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 Licensor for things done or furnished in connection with the Agreement and for any act or failure to act 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 Licensor from its obligations under the Agreement.
8. Taxes. Except as otherwise provided in the Agreement, the price does not include any federal, state or local sales, use, or other similar taxes applicable to this transaction, and Con Edison agrees to pay or reimburse Licensor for any such taxes. 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 Licensor for any interest, penalties or expenses Licensor 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 Licensor shall cooperate and assist Con Edison therein.
9. Warranty. Licensor warrants that (1) the media on which the Licensed Software is delivered shall be free from defects in material and workmanship, and (2) the Licensed Product shall conform to Licensor's published specifications therefor in effect on the date of this Agreement. If the Licensed product fails to meet the media warranty, Licensor shall upon notice by Con Edison promptly replace the defective media. If the Licensed Product fails to meet the warranty as to conformity to specifications, Licensor shall upon notice by Con Edison promptly correct the failure.
10. Cancellation
- A. Licensor may cancel this Agreement and any license granted hereunder if Con Edison is in default of any material provision hereof and such default is not cured within 30 days after Licensor gives Con Edison written notice

thereof.

B. In the event of any cancellation of this Agreement or any license granted to Con Edison hereunder, Licensor, as an exclusive remedy, may require that Con Edison cease any further use of the Licensed Software and immediately return the same and all copies thereof to Licensor.

11. No Waiver. Neither the acceptance of the Licensed Product or any part thereof nor any payment therefor nor any performance by Con Edison of Licensor's duties or obligations nor any failure of Con Edison to insist on strict performance by Licensor 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. No waiver by Con Edison shall be effective unless in writing and signed by Con Edison's authorized representative; any such waiver shall apply only to the particular event to which it refers.
12. Amendments. No modification or amendment to the Agreement shall be valid or binding unless in writing and signed by an authorized representative of each party.
13. Entire Agreement. The Agreement, as it may be amended in accordance with Article 12 hereof, Amendments, contains the entire agreement between Licensor 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.
14. 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. Licensor 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. Licensor agrees that service of process on Licensor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Licensor at the address shown in the Agreement or at the address of any office actually maintained by Licensor, or by actual personal delivery to Licensor. 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. Licensor 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.