

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

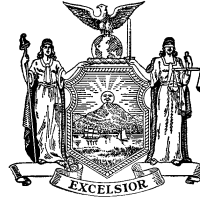
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Commissioners



PETER McGOWAN
Acting General Counsel

JACLYN A. BRILLING
Secretary

May 21, 2008

Luther Tai
Senior Vice President
Enterprise Shared Services
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003

Re: Case 08-M-0152 – Comprehensive Management Audit of Consolidated Edison Company of New York, Inc.

Dear Mr. Tai:

At its Session on May 21, 2008, the Commission selected The Liberty Consulting Group to perform the comprehensive management audit of Con Edison. Section 66(19) of the Public Service Law requires audits of the major electric and gas utilities at least once every five years and gives the Commission the authority to select a consulting firm and direct the utility to pay the costs of the audit.

Con Edison will be permitted to recover the actual cost of the audit, not to exceed \$1,360,460, on an as incurred basis through the company's Monthly Adjustment Clause.

Attached is the three-party contract for the performance of the management audit. Con Edison is hereby directed to execute the contract by signing all three originals, in substantially the same form, within ten days of the date of this letter directive.

If you have any questions, please contact Benjamin Stein at 518-486-2478 or Henry Leak at 518-474-2537.

Yours very truly,

Jaclyn A. Brillling
Secretary

Attachment

CASE 08-M-0152

AGREEMENT

AMONG

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AND

THE LIBERTY CONSULTING GROUP

AND

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
I	Scope of Work	2
II	Contract Administration	3
III	Scheduling and Completion of Work	4
IV	Compensation	4
V	Terms of Payment	5
VI	Cost Control and Limitation	6
VII	Work Plans & Reports	7
VIII	Force Majeure	9
IX	Inspection/Right to Audit	9
X	Subcontracting and Assignment	9
XI	Changes	10
XII	Disputes	10
XIII	Standard of Work/Independent Contractor	10
XIV	Ownership and Use of Reports, Confidentiality	11
XV	Termination	12
XVI	Indemnification	13
XVII	Compliance with Law	14
XVIII	Notices	14
XIX	Integration	15
XX	Utility Furnished Facilities	15
XXI	Collusive Bidding	15
XXII	Gratuities	16
XXIII	Conflicting Documents	17
XXIV	Limitation of Agreement	17
XXV	Equal Employment Opportunity Compliance	17
XXVI	Situs/Binding Effect	18

This Agreement for a Comprehensive Management Audit of Consolidated Edison Company of New York, Inc. dated this _____ day of _____ in the City and County of Albany, State of New York, by and among Consolidated Edison Company of New York, Inc. (hereinafter the "Utility") with its principal place of business at 4 Irving Place, New York, New York, and (hereinafter the "Consultant") with its principal place of business at _____, and the State of New York Public Service Commission (hereinafter the "Commission"), a New York State regulatory agency, with its principal place of business at Three Empire State Plaza, Albany, New York 12223.

WITNESSETH:

WHEREAS, pursuant to Section 66 (19) of the Public Service Law, the Utility has been directed by the Commission to enter into a contract with The Liberty Consulting Group for a Comprehensive Management Audit of Consolidated Edison Company of New York, Inc. (hereinafter "Audit") as defined herein; and,

WHEREAS, Section 66(19) of the Public Service Law provides that the Utility being audited enter into a contract with the auditor selected by the Commission; and,

WHEREAS, the New York State Department of Public Service (hereinafter the "Department") has been duly designated by the Commission to act as its agent in the execution and completion of this Agreement; and,

WHEREAS, the Consultant shall be required to work for, and under the direction of the Department in accordance with the Public Service Law, the Commission's orders, the Consultant's Proposal, and the terms and conditions of this Agreement; and,

WHEREAS, the Consultant submitted a Proposal, in response to a Request for Proposal (RFP), dated February 13, 2008, for a Comprehensive Management Audit of Consolidated Edison Company of New York, Inc. and was selected by the Commission to perform this Audit on the basis of said Proposal.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereby agree as follows:

ARTICLE I – SCOPE OF WORK

A. The Consultant shall perform the Audit as described in this Agreement, and in the RFP dated February 13, 2008, the Consultant's Proposal and the specifications of the Department's *Guide For Consultants* dated February 2008 (hereinafter the "*Guide*"), and the approved work plans for the cost as approved by the Commission in its Order issued _____, 2008. The Commission's orders, RFP, the Consultant's Proposal, the *Guide*, and the Final Detailed Work Plan are to be considered incorporated by reference into this Agreement.

B. Without limiting the foregoing, the parties hereto expressly agree to the following terms and conditions:

- 1) The Consultant agrees that, for a period of three (3) years from the date the Department certifies the Consultant's completion of this Audit as defined in Article V, Section C of this Agreement and upon the request of the Department, it shall provide information and advice to the Commission on matters related to this Audit and it shall provide a witness or witnesses if requested to testify on matters related to this Audit, in any proceeding or action to which the Department or the Commission is a party. The parties agree that the Consultant shall be compensated for such work so provided at its standard per diem rate for consulting services without any surcharge, and such charges shall be in addition to the amounts specified in Article VI, Section A hereof. The Consultant's obligation under this paragraph shall survive any termination of this Agreement.
- 2) So long as this Agreement is in force and for a period of two (2) years thereafter, the Utility shall not offer employment or solicit, directly or indirectly, any employee of the Consultant who has worked on this study to leave the employment of the Consultant and work for the Utility or any affiliated organization. So long as this Agreement is in force and for a period of two (2) year thereafter, the Consultant shall not offer employment to or solicit, directly or indirectly, any employee of the Utility or any employee of the Department who has worked on this Audit, to leave their employment and work for the Consultant or any affiliated organization.

- 3) The Consultant agrees that the project team of experienced personnel identified in the attached Proposal will be organized and assigned to the study in such a manner that the Audit will be completed in a timely, competent and professional manner. Upon written notice to the Department and the Utility, the Consultant may seek to substitute personnel with similar qualifications for those identified should any of the identified personnel terminate their employment or become unavailable due to reasons beyond Consultant's control. Changes in personnel or allocation of professional staff assigned to the project by the Consultant may be made only after a written request to the Department with a copy to the Utility, and upon the written consent of the Department (with a copy thereof sent simultaneously to the Utility).
- 4) The Consultant, its affiliated companies and any Audit subcontractor agree not to perform any work for the Utility or any affiliated organization as defined in Public Service Law Section 110 without the written permission of the Commission during the terms of this contract and not until at least two (2) years after the Department certifies the Consultant's completion of this Audit as defined in Article V, Section C of this agreement.
- 5) The Consultant certifies that it, its affiliated companies, and its Audit subcontractors have disclosed all existing contracts or agreements with the Utility or its affiliates. Further, the Consultant certifies that the same parties have disclosed to the Department all work performed for the Utility or its affiliates within the past two (2) years.

ARTICLE II – CONTRACT ADMINISTRATION

The Department designates Henry Leak III, as its Project Manager. All communications related to the Audit shall be directed to Mr. Leak.

The Utility designates Stuart Nachmias as its Project Manager.

The Consultant designates Richard Mazzini as its Project Manager.

The above representatives shall have primary responsibility and authority on behalf of their respective parties to administer the Agreement and to agree upon procedures for coordinating the efforts of the Utility and the Consultant.

Press releases or other public statements concerning the Audit shall not be issued by the Consultant or the Utility at any time prior to the Commission's approval of the Consultant's final report other than acknowledging the ongoing nature of this Audit. After the Audit, the Consultant or Utility will confer with the Department prior to issuing any press releases concerning the Audit.

ARTICLE III – SCHEDULING AND COMPLETION OF WORK

The Audit shall be performed in accordance with this Agreement, the Commission's orders, the Consultant's Proposal, the RFP, and the specifications of the *Guide* dated February 2008. The draft report of the Audit shall be completed by February 2009. A final written report shall be submitted by April 2009. The Consultant may also be required to make a final presentation to the Department, and when directed by the Department, to the Utility.

The Consultant agrees to conduct this Audit with promptness and diligence. The Utility agrees to make every reasonable attempt to schedule and coordinate meetings, interviews, and field trips and to provide requested documents so as to expedite prompt completion of this Audit without disruptions to its normal operations. The Consultant agrees to make every reasonable attempt to notify the Utility at least one week in advance of interviews and site visits. The Consultant shall notify the Department and the Utility immediately in writing in the event unforeseen circumstances cause, or are likely to cause delays in the performance schedule agreed to in Article VII that would require schedule adjustments. Schedule adjustments shall be granted in the event that delays are caused by the acts or omissions of the Department or the Utility and which are beyond the control of the Consultant.

ARTICLE IV – COMPENSATION

Subject to the limitations of this Agreement and the not to exceed price approved by the Commission and the certification by the Department in accordance with Article V, Section B herein, the Utility shall compensate the Consultant for all work and services performed by the Consultant or its approved subcontractors under this Agreement on the following basis:

The Utility shall compensate the Consultant for the necessary and reasonable time spent by each of its professional and support staff at the rates (which include out-of-pocket expenses and firm expenses) set forth in the attached Consultant's Proposal, as approved by the Department, subject to the provisions and limitations of Article VI herein. The Consultant agrees that the rates set forth therein do not exceed the current standard rates charged to its clients.

ARTICLE V - TERMS OF PAYMENT

The compensation provided for in Article IV, and as limited by Article VI, shall be paid by the Utility to the Consultant in accordance with the following terms and conditions:

A. Compensation. The Consultant will submit detailed monthly invoices to the Department and the Utility. Each invoice shall contain a detailed accounting of the hours worked within each task area by each employee of the Consultant for each day worked. The Consultant shall maintain detailed books, records and accounts, including without limitation, time sheets, expense vouchers, lodging receipts and invoices for any expenses in excess of \$24.99. A summary of the actual out-of-pocket expenses by category should be maintained on a monthly basis and provided to staff when the percent of professional fees billed have reached 70 percent, 80 percent, 90 percent and 100 percent. Such books, records, accounts, receipts and supporting documentation related to work performed and billed hereunder shall be preserved and made available within the State of New York to the Department for audit, upon reasonable request, for a period of two (2) years following the completion of the Audit. In the event of a dispute as to any amounts invoiced, all records with respect to such amounts shall be preserved by the Consultant until the dispute is finally resolved. The provisions of Article V(A) shall survive the termination of the contract.

B. Payment. The Department shall complete the certification review of the invoices within twenty (20) calendar days of receipt. The basis for the Department's certification shall be a finding that the fees are reasonable, necessary and correct, and billed in accordance with the provisions of this Agreement. In the event there are items contested by the Department, the uncontested balance will be certified within the above mentioned period. The Utility shall pay within twenty-five (25) calendar days of its receipt of the Department's written certification that

amount of any invoice that has been certified for payment by the Department subject to the retention of professional fees set forth below. Any and all payments by the Utility hereunder, or certifications by the Department, will be without prejudice to the Department's right to conduct a further audit and protest or challenge at a later point in time such invoices and payments made. If examination discloses that the Utility has paid for hours which have not in fact been worked, or for services not in fact rendered in accordance with the Agreement, the Consultant shall promptly refund to the Utility an amount equal to any such excesses, plus reasonable interest.

C. Retention of Partial Payment. There shall be retained by the Utility from each invoice, ten (10) percent of the charges for professional fees, which amount shall not be payable until the Audit and final report are completed, the completion is certified by the Department, and each and every obligation of the Consultant is completed to the satisfaction of the Department. Additionally, pending Department approval of the Consultant's work plan, an additional five (5) percent of professional fees will be retained. With the approval of the work plan the incremental five (5) percent of professional fees which were withheld will be released and subsequently ten (10) percent of professional fees will continue to be retained until the Department determines that all deliverables have been provided to the Department. Furthermore, until such time as the Consultant has completed its draft report, delivered it to the Department and the Utility for factual accuracy review, and it has been determined by the Department to be satisfactory, no more than seventy-five (75) percent of the budgeted professional fees will be paid to the Consultant.

D. Certification. Each invoice shall contain the following certification executed by the Consultant's Project Manager: "I certify that the above charges are correct and just, are billed in accordance with the Agreement, have not previously been billed except as indicated and that payment therefore has heretofore not been received."

ARTICLE VI – COST CONTROL AND LIMITATION

A. Limits. The Consultant's compensation for professional fees and expenses shall not exceed \$1,360,460.

Costs for the printing of the final report and providing testimony regarding the Audit, if requested by the Department, shall be in addition to the above limits.

B. Adjustment of Compensation. The Consultant's compensation shall not exceed the amounts set forth above except upon the prior written consent of the Department and upon notice to the Utility. If the Utility disagrees with the Department's determination, it shall have the right to submit the matter to the Commission for resolution pursuant to Article XII of this Agreement. The Consultant shall exercise close control over costs. The Consultant agrees to use its best efforts to perform the work under this Agreement as described in the Consultant's Proposal and other directions of the Department consistent with the RFP, and to complete the Audit within the associated compensation and time limitations (as specified in Article VII). The Consultant shall notify the Department in writing at any time it has reason to believe that the performance of the Audit hereunder will require any deviation from the RFP and the Consultant's Proposal. In the event the Consultant has reason to believe that the compensation limits set forth herein will require amendment, it shall promptly notify the Department in writing and the Department shall promptly notify the Utility in writing before any action is taken. The Department will review all requested changes and, after consultation with the Utility, will consider whether to seek approval of the Commission for changes. In the event of disapproval, the Consultant agrees to perform the Audit in accordance with the RFP and the Consultant's Proposal for the agreed-upon price.

C. Acceptance of Final Payment as Release. The acceptance by the Consultant of final payment hereunder shall operate as a general release to the Utility and the Department of all of the Consultant's liens or claims arising in connection with this Agreement. No payment, final or otherwise, shall operate to release the Consultant from any of its obligations under this Agreement.

ARTICLE VII – WORK PLANS & REPORTS

A. Draft Detailed Work Plan - The Consultant agrees to confer with the Department in the development of a draft work plan. The draft work plan should outline in additional detail the scope and methods to be employed by the Consultant during the course of the engagement as well as a detailed schedule (including milestones) for the remainder of the Audit.

B. Final Detailed Work Plan – The Consultant agrees to modify the draft, as appropriate after giving due consideration to comments by the Department, and submit a final

work plan to the Department for approval. Approval of the work plan by the Department will authorize the Consultant to execute the tasks as stated therein.

C. General Reports - The Consultant agrees to submit all the reports described herein, in the RFP and the *Guide*.

D. Progress Reports - The Consultant agrees to submit to the Department by the tenth business day following each month's end, a written monthly progress report consisting of the following:

- 1) A narrative briefly describing progress in relation to the project schedule as contained in the final work plan and an explanation for any discrepancies between the schedule and actual progress.
- 2) A list of interviews and site visits completed in the previous month.
- 3) A monthly report of consultant-days expended by activity in each task area.
- 4) A report (log) showing documents requested, the date requested and date received.
- 5) Any emerging findings (as they are identified) that would, if adopted, improve the Utility's operations and performance.

E. Draft Report - The Consultant shall prepare a draft report as set forth in the RFP. Copies of the draft report will be provided to the Department at the Department's place of business. Upon directive by the Department, the Consultant will also provide a copy of the draft report to the Utility. Within ten (10) business days or such additional period as established by the Department after said submission, the Utility will submit to the Department and the Consultant a written statement confirming that it has reviewed the draft report for factual accuracy and describing the nature of identified factual errors, if any, and providing comments on the draft report. If necessary, the parties will meet to review its contents and to provide the Consultant with their comments, facts or other input. The Consultant, in consultation with the Department, shall give consideration to such comments, facts or other input in producing revised draft reports, as necessary.

F. Final Report - The final report will be presented to the Department. The Utility will have an opportunity to submit its comments on the final report to the Department.

ARTICLE VIII - FORCE MAJEURE

The parties hereto shall not be considered in default in the performance of their obligations under this Agreement if said performance is prevented or delayed by any cause beyond the reasonable control of the party. Such instances, including, but not limited to, acts of God, acts of governmental authority, floods, strikes, explosions and riots, shall not relieve any party of liability if the party fails to use due diligence and take appropriate actions to remedy the situation. In the event a force majeure prevents or delays a party's performance, it shall promptly inform the other parties of same in writing.

ARTICLE IX - INSPECTION/RIGHT TO AUDIT

A. Inspection and Audit. The Department shall have the right to inspect, upon ten (10) calendar days notice, the Consultant's books and records as they relate to the Consultant's performance under this Agreement. The Consultant shall provide proper facilities for such inspections and audits and shall provide access to the work in progress. The fact that inspections or audits are made shall in no way relieve or release the Consultant from the obligation to perform and complete the Audit in accordance with this Agreement. The Consultant's obligation under this article shall be continual and shall not be affected by any Department certification for payment or by actual payment by the Utility. Any examination of the books and records or the work in progress shall be performed by the Department at its expense.

B. Subcontractor's Books and Records. The Consultant agrees to insert the substance of this Article, including this section, in all subcontracts, thereby giving the right to the Department to audit, at its expense, the books and records pertaining to any such subcontract. The books and records required of the subcontractor shall be as detailed as those required of the Consultant herein.

ARTICLE X - SUBCONTRACTING AND ASSIGNMENT

The Consultant is prohibited from assigning or subcontracting this Agreement, or any part hereof, or any monies due or to become due hereunder, without the express written consent of the Department. The Department shall consult with the Utility before consenting to any

assignment or subcontract. Any assignment or subcontract made without the Department's consent shall be void. All subcontracts set forth in the Consultant's Proposal attached hereto shall incorporate the provision of this agreement and be deemed approved concurrent with approval of this contract. The Consultant certifies that all subcontractors including those set forth in the Consultant's Proposal are, and will be, so bound. No permitted assignment or subcontract shall release the Consultant from any obligations hereunder or affect any rights or remedies of the Department or the Utility.

ARTICLE XI – CHANGES

Changes to the Consultant's approved work plan performed under this Agreement shall be made only upon the written approval of the Department, the consent of the Consultant and notification to the Utility. If the Department requests a change in the work plan performed under this Agreement, the Consultant shall promptly submit to the Department a detailed explanation for the change along with a written estimate of any required price and schedule adjustments necessitated by such change. Any changes which are approved by the Department and accepted by the Consultant will be reported to the Utility pursuant to Article VI, Section B and included as a supplement to this Agreement.

ARTICLE XII - DISPUTES

Any disputes between the Utility and the Consultant in the performance of this Agreement shall be submitted to the Department for resolution. In the event the Utility or the Consultant desires to dispute the Department's resolution, it may appeal the decision to the Commission. Pending the outcome of any such appeal, the Utility agrees to perform all of its other, uncontested obligations hereunder pending the resolution of the dispute. The Consultant agrees to continue its work under this Agreement notwithstanding the existence of a dispute or the fact that a dispute is resolved in a manner not satisfactory to the Consultant. In the event of a dispute, the Consultant, the Utility, and the Commission shall retain all legal rights, remedies and authorities otherwise available under law.

ARTICLE XIII - STANDARD OF WORK/INDEPENDENT CONTRACTOR

The Consultant shall perform the Audit in a thorough and professional manner and shall be responsible to the Department for any failure to meet that standard. The Consultant agrees

that in its performance of this Agreement, it and its subcontractors shall be independent contractors and neither the Consultant nor any of the persons or firms employed by it shall be deemed, for the purpose of Utility and Department liability, to be the agents, representatives or employees of the Utility or the Department.

ARTICLE XIV - OWNERSHIP AND USE OF REPORTS, CONFIDENTIALITY

A. Ownership and Use. All reports, data, drawings, plans, specifications, and other materials purchased or produced hereunder by the Consultant and not containing trade secret or security-sensitive information shall be retained by the Utility for six (6) years after completion of the Audit and then disposed of at the direction of the Commission. The Commission and the Department shall have the right to use any of these materials in the furtherance of regulatory responsibilities of the Department and the Commission in accordance with applicable provisions of law. Information obtained from the Utility that is not otherwise publicly available may not be published, disclosed or otherwise used by the Consultant for any purpose, which is not in the furtherance of the regulatory objectives required by this Agreement, without the written authorization of the Commission or the Utility.

B. Confidential Information. Consultant agrees that it will execute a nondisclosure agreement with the Utility, the form of which is annexed hereto as an Appendix and shall be an integral part of this contract. All information and data made available to the Consultant by the Utility to enable the Consultant to perform the Audit shall be made available, upon request, for review by the Department and shall be held available for inspection at the Utility's offices. Upon the Department's request to the Utility, copies of such information and data will be supplied to the Department. With respect to any such information or data requested by the Department, the Utility may request confidential treatment pursuant to 16 NYCRR Section 6.3, and Section 89(5) of the Public Officers Law. The Department may utilize any information or data furnished by the Utility consistent with the above provisions of this Agreement and applicable provisions of law and administrative regulations.

Prior to final payment, the Consultant will certify in writing that no copies of documents designated by the Utility as proprietary, confidential, or determined by the Commission to be

trade secret have been made or retained, whether by reproduction, by electronics, by photograph or by any other means.

The personal notes of the Consultant shall be regarded as confidential and shall not be subject to disclosure except to the Department, or subject to release except as may directed by the Department or otherwise be required by law. Such notes must either be kept on site at the Utility or at the Consultant's office. All work papers supporting the report must be delivered to and maintained by the Utility for no fewer than six (6) years after the completion of the report and be made available for review by the Department if requested.

The Consultant and the Utility shall not release or disclose any draft, work papers, finding, conclusion or recommendation made by the Consultant, except as may be required by law; if either the Consultant, the Department or the Utility alleges a legal requirement to disclose, it must provide written notice to the other parties. The Consultant's final report may include both public and confidential portions as described in the RFP.

The above provisions relating to confidentiality shall not apply to information which is (a) at the time of disclosure generally available to the public, or (b) contained in the Consultant's final public report after it has been released by the Commission.

ARTICLE XV – TERMINATION

The Department may terminate this Agreement in whole or in part, with or without cause, upon fifteen (15) calendar days' written notice to the Consultant and may terminate the Agreement immediately for cause, by written or oral notice to the Consultant. If oral notice of termination for cause is given to the Consultant, written confirmation of the basis for termination shall be provided to the Consultant and the Utility. Upon receipt of said notice, the Consultant shall stop all work specified in the notice and being performed hereunder; shall place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of any unterminated portion of the work; shall terminate all orders and subcontracts to the extent that they relate to the notice of termination, and shall take such action as the Department may direct for the protection, preservation, and disposition of property, the title to which the Department has or may acquire under this Agreement. Upon the written consent of both the Department and the Utility, Consultant shall assign to the Department, in a manner and

to the extent directed by the Department, all right, title, and interest of the Consultant under the orders and subcontracts so terminated. The Utility shall, subject to the Department's approval, settle or pay all claims arising from terminated orders and subcontracts. The Utility shall, subject to the Department's approval, pay the Consultant all reasonable fees and expenses which are reimbursable under this Agreement and not paid prior to the effective date of the notice of termination. The Utility shall also pay to the Consultant upon certification by the Department any reasonable costs attributable to the cancellation of this Agreement. The Consultant shall make every reasonable effort to keep such costs and expenses to a minimum. After receipt of the Department's notice of termination, the Consultant shall submit its termination settlement claim promptly but in no event later than ninety (90) calendar days from the effective date of termination. The Consultant shall not be entitled, in any event, to be paid monies in respect to costs, whether direct or indirect, fees, lost profits or otherwise for work not actually performed prior to the effective date of termination. Termination shall not relieve any party of any obligation that arose or may arise out of work performed prior to termination, and any obligation that survives this Agreement.

All subcontracts and agreements that the Consultant enters into to accomplish the work under the terms of this Agreement shall obligate such subcontractors to comply with the provisions set forth above.

ARTICLE XVI - INDEMNIFICATION

The Consultant hereby agrees to defend, indemnify and hold harmless the Utility, its agents, employees, officers, directors, successors and assigns, the Department and the Commission, against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorney's fees, arising out of or in any way resulting from the Consultant's performance under this Agreement, including but not limited to personal injury or property damage, including injury or damage to the person or property of the Department, the Utility or the Consultant, its agents, employees, or subcontractors, and caused in whole or in part by any negligent or wrongful act or omission or due to statutory liability of the Consultant, its agents, employees, or subcontractors, and whether or not caused in whole or in part by any negligent or wrongful act or omission by the Utility or the Department. Notwithstanding the

foregoing, the Consultant is not required to indemnify or hold harmless the Utility, the Department, or any third party for the Utility or the Department, for the Utility's, Department's or third party's negligent or wrongful acts or omissions. The Consultant's liability for damages, direct or consequential, resulting from any breach of contract shall be limited to the amount the Utility is obligated to pay the Consultant under this Agreement.

The Consultant, at its own expense, shall maintain liability insurance covering injury to or death of persons (\$2,000,000 general aggregate, \$1,000,000 per occurrence combined single limit), damage to property (\$2,000,000 general aggregate, \$1,000,000 each occurrence combined single limit), automobile (\$1,000,000 per occurrence single limit) and contractual liability, to insure the risks assumed by the Consultant under this Agreement, and workers' compensation insurance in accordance with the statutory requirements of the State of New York. The Utility, the Department, and the Commission shall be additional named insureds under the above liability policies and the Consultant shall furnish each with a certificate of insurance.

The obligations of the Consultant under this Article survive the termination of this Agreement.

ARTICLE XVII - COMPLIANCE WITH LAW

The Consultant shall familiarize itself and comply with all applicable laws, ordinances, rules and regulations of all federal, state and municipal governments or the legally constituted agencies thereof.

ARTICLE XVIII - NOTICES

All written notices and other communications between the parties shall be sufficient in all respects if sent via first class mail, respectively, to:

Stuart Nachmias
Vice President
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003

Richard Mazzini
The Liberty Consulting Group
65 Main Street, P.O. Box 1237
Quentin, Pennsylvania 17083

Henry Leak, III
Office of Accounting and Finance
New York State Department of Public Service
3 Empire State Plaza
Albany, NY 12223

Each party may, upon written notice, change the name of the person and/or the address to which such notices may be directed.

ARTICLE XIX - INTEGRATION

This Agreement and the documents referenced herein constitute the entire Agreement between the parties. No changes, alterations, or modifications shall be effective unless in writing, signed by the duly authorized representatives of the parties and approved as provided in Article XI, herein.

ARTICLE XX - UTILITY FURNISHED FACILITIES

The Utility shall furnish, as reasonably needed and free of charge, suitable working space, locking office and file facilities, computer, high speed internet access, printer, fax machine, photo copying machine and telephone facilities to the Consultant at the Utility's offices. While in or on the Utility's property the Consultant agrees to: a) abide by the Utility's operating and safety rules and procedures, b) plan, arrange and conduct its work such that, to the extent possible, there will be minimum interference with or interruption of the continuous operation of the Utility's business, and c) maintain the Utility's working and office areas in a neat and professional manner.

ARTICLE XXI - COLLUSIVE BIDDING

The Consultant certifies that to the best of its knowledge and belief:

A. The prices in its Proposal attached hereto were arrived at independently without collusion, consultation, communications or agreement with any bidder or with any competitor for the purpose of restricting competition.

B. Unless otherwise required by law, the prices so quoted and which form part of this Agreement were not based on prices quoted by any other bidder or competitor and were not

disclosed by the Consultant to any other bidder, directly or indirectly, prior to the opening of bids.

C. No attempt was made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

ARTICLE XXII - GRATUITIES

The Consultant, on behalf of itself and its subcontractors, agents, servants and employees, warrants that no gratuity, payment, gift, service or item of value has been or will be offered to the Utility or Department employee or to any family member or designee, associate or agent of the Utility or Department employee. The tendering of any such gratuity, payment, gift, service or item of value to the Utility or Department employee or to any other family member or other designee, associate or agent of the Utility or Department employee, is an act of default and shall give rise to an immediate right of termination of this Agreement by the Department. In addition, the Consultant will be liable to the Commission for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to the Utility or Department employee or to any other family member or other designee, associate or agent of the Utility or Department employee, whether such tendering is caused by the Consultant, its subcontractors, agents, servants or employees.

The Utility, on behalf of itself and its subcontractors, agents, servants and employees, warrants that no gratuity, payment, gift, service or item of value has been or will be offered to the Consultant or its subcontractors, agents, servants and employees, or any family member or designee, associate or agent of the Consultant. The tendering of any such gratuity, payment, gift, service or item of value to a Consultant or any other family member or other designee, associate or agent of any Consultant, is an act of default and shall give rise to an immediate right of termination by the Department of this Agreement. In addition, the Utility will be liable to the Commission for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to a Consultant or to any other family member or other designee, associate or agent of any Consultant, whether such tendering is caused by the Consultant, its subcontractors, their agents, servants or employees.

ARTICLE XXIII - CONFLICTING DOCUMENTS

To the extent that any other document referenced herein or attached hereto conflicts with this Agreement, any dispute will be resolved by giving precedence and control to the documents in the following order: (1) this Agreement, (2) the Approved Detailed Workplans, (3) the Consultant's Proposal, (4) the RFP, and (5) the *Guide*. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute but one and the same Agreement.

ARTICLE XXIV – LIMITATION OF AGREEMENT

Except as expressly provided herein, this Agreement shall not constitute a waiver by the Utility, the Department or the Commission of any statutory or other legal rights, obligations or duties to which the parties may otherwise be entitled or by which they may be bound.

ARTICLE XXV - EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Consultant shall comply with all federal, state, and municipal laws and regulations relating to discrimination against employees or applicants for employment based on race, creed, sex, color or national origin, including but not limited to federal and New York State regulations.

The Consultant agrees to fully comply with the provisions of all laws, rules and regulations and policies referenced in the preceding paragraph and any amendments thereto. In addition, all subcontracts and agreements that are entered into by the Consultant under this Agreement shall obligate such subcontractor to comply with the provisions set forth above. The Consultant and all subcontractors shall, upon request, submit to the Department and the Utility such compliance reports as may be reasonably required by the Department or the Utility to show that the Consultant and each of its subcontractors have complied with these foregoing provisions.

The Department or the Utility may take appropriate action as a result of any breach of the foregoing, including, but not limited to, immediate termination.

ARTICLE XXVI - SITUS/BINDING EFFECT

This Agreement may be executed in counterpart originals and shall be deemed to have been executed in the City and County of Albany, State of New York. It shall, in all respects, be construed and governed in accordance with the laws of the State of New York and shall be binding upon the parties hereto, their successors and assigns when their respective counterpart has been executed.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

Consolidated Edison New York Inc.

BY:

TITLE:

DATE:

Consultant

BY:

TITLE:

DATE:

State of New York

Department of Public Service

BY: Benjamin Stein

TITLE: Unit Leader, Management Audits, Office of
Accounting, Finance and Economics

DATE:

STATE OF NEW YORK)

) ss:

COUNTY OF)

(Consultant)

On this _____ day of _____, 2008 before me personally appeared _____, to me known, who, being by me duly sworn did depose and say that he resides at _____; that he is the _____ of _____, the Corporation described in the foregoing instrument and has the authority to execute the instrument on the Corporation's behalf.

NOTARY PUBLIC

STATE OF NEW YORK)

) ss:

COUNTY OF)

(Utility)

On this ____ day of _____, 2008 before me personally appeared _____, to me known, who, being by me duly sworn did depose and say that he resides at _____; that he is the _____ of _____, the Utility described in and which executed the foregoing instrument and that he signed his name thereto by with the authority of said Utility.

NOTARY PUBLIC

STATE OF NEW YORK)

) ss:

COUNTY OF ALBANY)

(Department)

On this ____ day of _____, 2008 before me personally came Benjamin Stein to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same by and on behalf of the New York State Department of Public Service.

NOTARY PUBLIC

APPENDIX

NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT, dated as of _____, by and between Consolidated Edison New York Inc. ("Utility") and ("Consultant").

W I T N E S S E T H:

WHEREAS, the New York State Public Service Commission ("Commission"), has directed that a Comprehensive Management Audit of Consolidated Edison should be performed ("Audit"); and

WHEREAS, this Nondisclosure Agreement ("Nondisclosure Agreement") has been annexed to and made a part of the agreement among the Utility, the Consultant, and the Commission, dated as of _____ ("Audit Agreement"); and

WHEREAS, Consultant has been retained at the direction of the Commission to conduct the Audit in accordance with the pertinent terms and conditions within the Commission's RFP and within the Proposal; and

WHEREAS, Utility confirmed that it would cooperate with both the spirit and letter of the Audit in recognition of the public interest; and

WHEREAS, it is contemplated that, in the course of conducting the Audit the Consultant will request that Utility provide, disclose, or make available information or material including information or material which may contain trade secrets or be confidential in nature (Confidential Information; and

WHEREAS, Utility desires to evidence its commitment to cooperate in providing or making available to Consultant such information or material as Consultant may reasonably

request in furtherance of the Audit and the parties desire to provide by this Nondisclosure Agreement for the protection of all of the information and material provided to Consultant by Utility.

NOW THEREFORE, in consideration of the mutual agreements and promises and covenants contained herein, and of the mutual benefits to be gained by the performance thereof and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Utility agrees to furnish, or to make available for inspection, documents, and materials that are reasonably required by Consultant to discharge its study responsibilities on the terms and conditions set forth in this Nondisclosure Agreement. Such information will be made available for review and inspection by Consultant by prearranged appointment at the Utility's offices, during the regular business hours of the Utility. The Utility shall not impose unreasonable times or locations for reviewing data.

2. Except as provided in paragraph 3 below, one copy of items designated by Utility as confidential, proprietary, or trade secret will be made upon request of Consultant who has signed the Nondisclosure Agreement, such copy to be made by Utility personnel, who will affix a stamp or otherwise identify the information as confidential, proprietary, security-sensitive, or trade secret. The Consultant who requested said copy shall sign a list enumerating all items of confidential, proprietary, or trade secret information which has been copied and acknowledging that such copies have been received. The Consultant will provide a copy of this list to the Department. No other or further duplication of the copies shall be made by the Consultant. Consultant may take limited notes regarding such confidential, proprietary, or trade secret information as may be necessary in connection with Consultant's Review. Such notes shall be treated the same as the confidential, proprietary, or trade secret information from which the notes were made.

3. The Utility shall take reasonable and necessary steps to ensure that any Confidential Information of such a highly sensitive nature that disclosure of such information would expose the Utility or any of its affiliates to an unreasonable risk of harm does not leave its

premises. The Utility shall clearly mark the information "Confidential", and shall maintain a current list of such information provided to the Consultant, which shall be signed by the Consultant to acknowledge its disclosure by the Utility to the Consultant. This in no way should be interpreted to mean that the Consultant may not access such document or other information. The Utility will make appropriate and efficient alternative arrangements to allow the Consultant access to this information.

4. All data or business information ("information") of whatever nature or kind and in whatever form the information (tangible or intangible) is provided, made available or disclosed to the Consultant by Utility or by any of its directors, officers, agents or employees or by any of its affiliates or independent contractors or their directors, officers, agents or employees in connection with or related to the Audit shall be considered confidential, shall be held in strictest confidence, shall be used only for the purpose of performing the Audit, and shall not without the prior written consent of Utility be distributed, disclosed, or disseminated in any way except to Consultant's employees, its subcontractors or their employees with a definable need to know or use such information. The Utility shall maintain a current list of such information provided to the Consultant, which shall be signed by the Consultant to acknowledge its disclosure by the Utility to the Consultant. Consultant shall not copy or otherwise duplicate information that has been specifically designated by Utility as proprietary, confidential, or trade secret. In addition, before any employee of Consultant or any employee of Consultant's subcontractors receives or has access to information, each such employee shall sign a form (Attachment A) acknowledging that his or her possession and use of the information is subject to this Nondisclosure Agreement. All original forms shall be delivered from the Consultant to the Utility.

5. Consultant shall take particular care to safeguard the proprietary nature of information, including all information described in paragraphs 2 and 3, above, and shall notify its employees, or any subcontractors and their employees, by instruction or by appropriate legend on information of the nondisclosure requirement of this Nondisclosure Agreement.

6. Consultant recognizes that the information which is furnished hereunder, all information described in paragraphs 2 and 3, above, may contain unique, valuable, and

special business information or trade secrets of Utility and acknowledges and understands that: (a) many operational or planning documents are prepared strictly for the internal use of Utility; and disclosure of the content could jeopardize the security of Utility operations; (b) disclosure or compromise of such material would have a negative effect on the ability of Utility management to freely produce written planning documents; (c) there is competition in the utility business; (d) information relating to such competitive endeavors may have been developed at significant expense and be original and confidential to Utility; and (e) disclosure of any Information may cause irreparable harm to Utility, with respect to both ongoing and future business operations. Accordingly, it is expressly acknowledged and agreed that the remedy at law for any breach of the covenants contained in this Nondisclosure Agreement may be inadequate. In recognition of that concern, Consultant agrees that Utility shall be entitled to injunctive relief, without bond, upon the finding by a court of competent jurisdiction of a breach of any of the provisions of this Nondisclosure Agreement by Consultant, which relief shall be in addition to, and not in derogation of, any other remedies that may be available to Utility as a result of any such breach.

7. This Nondisclosure Agreement shall become effective as of the effective date of the Audit Agreement. The obligation to protect Information, including all information described in paragraphs 2, 3 and 4, above, shall survive the conclusion or termination of the Audit or of any proceedings related thereto.

8. In furtherance of protecting the information furnished pursuant to the Audit, all requests by Consultants for information shall be directed solely to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, NY 10003
(914) 924-6415

9. Upon the conclusion of the Audit and the acceptance by the Commission of the Consultant's Final Report of the Audit, Consultant shall promptly return to Utility all Utility-designated confidential, proprietary and trade secret information provided to it, including any and all copies thereof, and any and all notes in the Consultant's possession containing such information, and certify in writing that it has done so.

10. Any subcontractors employed, retained or affiliated by Consultant in connection with the Audit shall be similarly required to evidence their concurrence to the terms and conditions of this Nondisclosure Agreement prior to the disclosure to such subcontractors of any such Information. Such concurrence shall be in writing on the attached form (Attachment A).

11. Notwithstanding the above, disclosure of Information to the Department, Commission or its agent is governed by the Audit Agreement.

* * * * *

This Nondisclosure Agreement has been executed by officers who represent that they are duly authorized to sign on behalf of their company and bind the company to the provisions of this Nondisclosure Agreement.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

CONSULTANT

SIGNATURE: _____

SIGNATURE: _____

TYPED NAME: _____

TYPED NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ACKNOWLEDGEMENT

I affirm that I have read the Nondisclosure Agreement dated as of _____, between and Consolidated Edison Company of New York, Inc. in connection with the Comprehensive Management Audit of Consolidated Edison Company of New York, Inc. directed by the New York State Public Service Commission, and I agree to comply with and be bound by the terms of that Nondisclosure Agreement.

Signature

Typed Name

Title

Employer or Firm

Address

Address

Telephone Number

Dated: _____