

**Contains Confidential Commercial Information**

**Consolidated Edison Company of New York, Inc. – Contract for Electric-related goods or services**

ATTACHMENT NO. 1

CONTRACTOR: SAFEWAY CONSTRUCTION ENTERPRISES  
INC

PURCHASE ORDER NO.: 4139164

BID COMPARISON:

\$1,449,780

\$1,461,121

\$1,946,900

\$2,427,462

\$2,451,848

\$3,229,855

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COMPASS Complex Service PO  
4139164, 3

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4139164**

Revision **3**

PO Approved Date **05/09/2013**

Revision Date **05/09/2013**

Buyer **Andre Dunkley**

Supplier: **SAFWAY CONSTRUCTION ENTERPRISES INC**

**COMPASS 54-60 44TH ST**

**MASPETH, NY 11378**

**UNITED STATES**

Supplier

Contact:

Key

ConEd

Contact:

**Richard Harnish**

**347-672-3018**

**HARNISHR@CONED.COM**

Ship To: **700 EAST 16TH ST**

**NEW YORK, NY 10009**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**8880 Immediate DESTINATION**

*Notes:* The base bid of this purchase order is \$879,000 & \$524,780 For Attachment A work. Est. Total is \$1,403,780.00. Work Performed under Attach. A is not guaranteed.

FURNISH SUPERVISION, LABOR, MATERIAL, TOOLS AND EQUIPMENT TO EXCAVATE, And REFURBISH FEEDERS M51 & M52 LOCATED FROM 147th STREET to 153rd STREET and BROADWAY. PERMANENT ROADWAY RESTORATION WILL BE PERFORMED BY OTHER, PARTIES AS DETERMINED BY CON EDISON AT ITS SOLE DISCRETION. THE WORK SCOPE SHALL INCLUDE BUT NOT LIMITED TO; EXCAVATION, SHEETING, BACKFILL AND RESTORATION TO SUPPORT THE INSPECTION AND REFURBISHMENT OG TWO 138KV FEEDER CONDUITS AND TWO RETURN LINES FOR A DISTANCE OF APPROX. 1000 FT.

NO VENDOR CAN PERFORM WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY CON EDISON EH&S.

EFFECTIVE DATES OF THIS CONTRACT ARE April 15, 2013 TO April 30 2014,

. ALL WORK MUST BE PERFORMED IN

ACCORDANCE WITH:

- CON EDISON'S BID EVENT # 96052 AS DISTRIBUTED BY ORACLE ON BEHALF OF CON EDISON. ALL TERMS AND CONDITIONS, SPECIAL CONDITIONS, SPECIFICATIONS AND DRAWINGS WILL APPLY, INCLUDING ANY ADDITIONAL DOCUMENTS REFERENCED THEREIN.

- CON EDISON'S STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS  
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DATED July 1, 2012,

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- PROJECT SPECIAL CONDITIONS DATED March 14, 2013
  - CON EDISON'S TRENCHING MANUAL DATED APRIL 2004, REV. 7
  - EH&S HAZARD ASSESSMENT CHECKLIST AS DISTRIBUTED BY CON EDISON.
  - SAFEWAYS CONTRACTING BID SUBMITTED ON TO CON EDISON ON MARCH 22, 2013  
DETAILING SAFEWAY'S LUMPS SUM AND UNIT PRICES TO CON EDISON.
  - SAFEWAY CONTRACTING OFFER and COMPLIANCE DATED MARCH 20, 2013
  - PREVAILING WAGES CLARIFICATIONS.DOC
  - PREVAILING WAGE INFORMATION 1.DOC
  - LABORLAW\_PAYROLL\_FORM\_W\_INSTRUC.PDF
  - SKETCH's 50 and 51
  - CONTRACTOR JOB LOG ATTACHMENT B1.DOC
  - PREVIALLING WAGES #2.DOC
  - MEETING MINUTES Dated April 1, 2013
- THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL AUTHORITIES HAVING JURISDICTION OVER THIS TYPE OF WORK.  
. REGARDLESS OF THE INVOICE INSTRUCTIONS INDICATED ON THE PURCHASE ORDER DOCUMENT, THE CONTRACTOR IS NOT REQUIRED TO SUBMIT AN INVOICE TO ACCOUNTS PAYABLE FOR ANY PURCHASE ORDER PROCESSED IN THE COMPASS SYSTEM. ON CONTRACTS THAT REQUIRE AN INVOICE, THE CONTRACTOR MUST SUBMIT IT TO THE COMPANY AUTHORIZED REPRESENTATIVE WITH THE SIGNED CONTRACTOR PERFORMANCE STATEMENT.
- ATTACHMENT A ESTIMATED QUANTITIES ARE NOT GUARANTEED. SAFEWAY CONSTRUCTION SHALL ONLY BE PAID FOR THE ACTUAL QUANTITY OF EACH ATTACHMENT A ITEM PERFORMED OUTSIDE OF THE WORK SCOPE. ALL ATTACHMENT A UNIT PRICES SHALL REMAIN FIXED AND FIRM FOR THE DURATION OF THE CONTRACT REGARDLESS OF THE ACTUAL QUANTITIES PERFORMED.
- ITEMS UNIT OF MEASUREMENT ESTIMATED QUANTITIES UNIT PRICE

T2R CY 11 \$440.00  
T41 CY 39 \$275.00  
T42 CY 78 \$330.00  
T101 SG 600 \$7.00  
T210 CH 35 \$75.00  
T113 SF 300 \$10.00  
GT-60 SF 300 \$15.00  
T115A SF 300 \$10.00  
ST1-01A CH 560 \$740.00  
ST1-01B CH 40 \$990.00  
ST1-02A LF 85 \$90.00  
ST1-02B LF 60 \$75.00

All prices and amounts on this purchase order are stated in USD

Reference Documents: Contractor Job Log Attachment B1.doc

Prevailing Wages \_2[1].doc

PREVAILING WAGE INFORMATION 1.doc

Meeting Minutes Dated April 1, 2013.pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

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Item

1 Needed:

05/23/2013

1 EACH 1403780.0

0

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1,403,780.00  
LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT  
Max Retainage Amount: 43,950.00  
Retainage Rate: 10%  
1-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT

Needed:  
05/23/2013  
1 EACH 1403780.0

0  
1,403,780.00  
Ship To:

Use the ship-to address at the top of page 1

Total: **1,403,780.00 (USD)**

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARRMENT BY THE FEDERAL GOVERNMENT**

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(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to

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comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Standard Purchase Order 4139164, 3

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and

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enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Standard Terms and Conditions for Construction Contracts

#### CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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#### STANDARD TERMS AND CONDITIONS

#### FOR

#### CONSTRUCTION CONTRACTS

July 1, 2012

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### STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

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

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

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"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the



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drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all Standard Purchase Order 4139164, 3

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such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4. Price and Payment.**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor

furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by

Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, Standard Purchase Order 4139164, 3

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among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work,

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waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being

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submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment

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with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions

which may affect the Work, including equipment or structures in place or to be in place, or work being or to be

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performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

### **9. Contractor's Performance.**

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection

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with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4139164, 3

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Standard Purchase Order 4139164, 3

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do

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not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(ii) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

(iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Standard Purchase Order 4139164, 3

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating

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the street) is required and New York City Administrative Code Section 19-142, or its successor,(or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4139164, 3

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor,(or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work.

Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4139164, 3

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work.

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent



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and character of Work done on a T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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

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(b)The nature and quantity of any materials, plant and equipment furnished or used in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E.Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F.Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

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17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing

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arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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 Standard Purchase Order 4139164, 3

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4139164, 3

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance

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with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison.

Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

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New York, N.Y. 10003  
Attention: Purchasing Department  
Section Manager,  
Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Standard Purchase Order 4139164, 3

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing.

Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document

and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4139164, 3

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien,

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including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4139164, 3

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor

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shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con



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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall

## **Contains Confidential Commercial Information**

be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Standard Purchase Order 4139164, 3

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison.

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the

## **Contains Confidential Commercial Information**

policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any

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portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4139164, 3

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R,

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Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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. Standard Purchase Order 4139164, 3

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with

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respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Signatures**

#### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 2

CONTRACTOR: AMERICAN PETROLEUM EQUIPMENT AND  
CONSTRUCTION COMPANY INC

PURCHASE ORDER NO.: 4141737

BID COMPARISON:

\$1,161,100

\$1,336,684



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COMPASS Complex Service PO

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4141737**

Revision **2**

PO Approved Date **07/08/2013**

Revision Date **07/08/2013**

Buyer **Seth Stephens**

Supplier: **AMERICAN PETROLEUM EQUIPMENT AND CONSTRUCTION COMPANY INC**

**63 ORANGE AVE**

**WALDEN, NY 12586**

**UNITED STATES**

Supplier

Contact:

**GIAIMO ROBERT**

**(845) 778-5110**

Key

ConEd

Contact:

**Ka Cheung**

**718-204-4373**

**CHEUNGK@CONED.COM**

Ship To: **Multiple**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**13285 Immediate**

**Notes:** PLEASE SIGN AND RETURN CONTRACT

THE CONTRACTOR SHALL SUPPLY ALL REQUIRED SUPERVISION, LABOR, MATERIALS (OTHER THAN THOSE SUPPLIED BY CON ED), TOOLS, AND EQUIPMENT TO PERFORM THE REMOVAL AND REPLACEMENT OF THE EXISTING FUEL STATION LOCATED AT THE ORANGE & ROCKLAND SPRING VALLEY OPERATION CENTER IN SPRING VALLEY, NY. THE SCOPE OF WORK INCLUDES EXCAVATION, REMEDIATION, REMOVAL OF EXISTING FUEL TANKS AND COMPONENTS. RESTORATION, INSTALLATION OF NEW FUEL TANKS, ISLAND WITH PUMPS AND ALL ASSOCIATED PARTS AND CONNECTIONS.

THIS IS A FIVE MONTH PROJECT COMMENCING IN APRIL 2013, ENDING IN SEPTEMBER 2013

ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE SPECIAL TERMS AND CONDITIONS, CLARIFICATIONS, PROCEDURES, AND SPECIFICATIONS WITHIN CON EDISON BID EVENT 60003-2. AGREED TO BY THE CONTRACTOR WITHIN CONTRACTOR QUOTE #115019.

TERMS AND CONDITIONS OF PURCHASE ORDER:

- CON EDISON'S INVITATION TO RFQ #60003-2, ORIGINALLY DATED 12/13/12, AND ALL DOCUMENTS REFERENCED THEREIN.

- CON EDISON STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS, COMPASS Complex Service PO

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DATED 7/1/2012.

- CON EDISON SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS, DATED 6/7/2011.

- CON EDISON PRE-AWARD MEETING, DATED 3/12/13.

- CON EDISON'S CLARIFICATIONS, DATED JANUARY 7,8,17 AND 18, 2013

-CONTRACTOR PROVIDED DISCLOSURE FORM, DATED 1/18/2013.

-CONTRACTOR PROVIDED OFFER FORM, DATED 1/10/2013.

-CONTRACTOR PROVIDED COMPLIANCE FORM, DATED 1/18/2013.

-APPENDIX A

-CON EDISON GIFT POLICY

NO WORK IS TO COMMENCE UNTIL A HEALTH AND SAFETY PLAN IS SUBMITTED TO AND ACCEPTED BY THE CON EDISON ENVIRONMENTAL HEALTH AND SAFETY DEPT. ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$1,309,890. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS PURCHASE ORDER.

OUT OF SCOPE PRICES

THE CONTRACTOR SHALL ONLY BE PAID FOR THE ACTUAL QUANTITY OF EACH ITEM PERFORMED OUTSIDE THE WORK SCOPE. ALL OUT OF SCOPE UNIT PRICES SHALL REMAIN FIXED AND FIRM FOR THE DURATION OF THE CONTRACT REGARDLESS OF THE ACUTAL QUANTITIES PERFORMED.

OUT OF SCOPE ITEMS:

A. BREAKOUT/DISPOSE MASONRY/CONCRETE/ROCK (NOT INDICATED ON THE DRAWINGS/SPECIFICATION)

PRICE: \$120 /CY

E. FURNISH AND DELIVER CLEAN FILL

PRICE: \$38 /CY

G. LOAD & DISPOSE EXCAVATED SOIL NON-HAZARDOUS

PRICE: \$79 /TON

K. UNIT PRICE FOR FURNISH AND DELIVER BITUMINOUS PAVEMENT

PRICE: \$6.75 /SQ FT

Reference Documents: Special Conditions -UPDATED SpringValley Fuel Station.docx

All prices and amounts on this order are expressed in USD

COMPASS Complex Service PO

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Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

1 Needed:

07/11/2013

1 EACH 1309890.0

0

1,309,890.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 65,494.50

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

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07/11/2013  
1 EACH 1309890.0  
0  
1,309,890.00

Ship To:  
31-01 20TH AVE (BLDGS. 136 & 137)  
ASTORIA, NY 11105  
UNITED STATES

2 Needed:  
07/08/2013  
9384 EACH 1.00 9,384.00  
LUMPMOD  
2-1 LUMPMOD Needed:  
07/08/2013  
9384 EACH 1.00 9,384.00

Ship To:  
4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES

Total: **1,319,274.00 (USD)**  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to

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incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt

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subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Standard Purchase Order 4141737, 2

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration

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or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Standard Terms and Conditions for Construction Contracts

#### CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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#### STANDARD TERMS AND CONDITIONS

#### FOR

#### CONSTRUCTION CONTRACTS

July 1, 2012

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### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

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

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

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"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3. Specifications, Plans, and Drawings.

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A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all Standard Purchase Order 4141737, 2

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such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4. Price and Payment.**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor

furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each



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Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, Standard Purchase Order 4141737, 2

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among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for

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every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such Standard Purchase Order 4141737, 2

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor's sole and exclusive

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remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

### **7. Safeguards in Work.**

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation,

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handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4141737, 2

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

### **9. Contractor's Performance.**

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall

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include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

### **12. Warranties.**

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4141737, 2

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work

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shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Standard Purchase Order 4141737, 2

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(ii) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

(iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Standard Purchase Order 4141737, 2

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

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A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4141737, 2

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4141737, 2

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not

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limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs



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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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost Standard Purchase Order 4141737, 2

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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

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binding determination by the Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

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E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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 Standard Purchase Order 4141737, 2

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4141737, 2

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i)halt the continuation of such Work; and
- (ii)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii)perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25.Subcontracting.

A.Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Standard Purchase Order 4141737, 2

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29.Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4141737, 2

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent

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with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4141737, 2

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in

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writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33. Termination for Convenience.**

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4141737, 2 Proprietary and Confidential Page 38 of 49 change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to

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any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4141737, 2

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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



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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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Standard Purchase Order 4141737, 2

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison.

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations

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hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default.

Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether

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or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4141737, 2

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### 42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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 Standard Purchase Order 4141737, 2

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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

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hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or

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remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48.Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49.Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50.Governing Law. The Contract shall be interpreted 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. Standard Purchase Order 4141737, 2

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

52.Submission to Jurisdiction/Choice of Forum.

A.Contractors 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.Contractors 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

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53.Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54.Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56.Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).  
332439v.2

### Signatures

#### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 3

CONTRACTOR: MANETTA ENTERPRISES INC DBA  
MANETTA INDUSTRIES

PURCHASE ORDER NO.: 4144801

BID COMPARISON:

\$6,364,175

\$6,454,545

\$7,378,037

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Blanket Purchase Agreement 4148801, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **Blanket Purchase Agreement**

Order **4148801**

Revision **0**

PO Approved Date **05/21/2013**

Revision Date

Current Buyer **David Blaut**

Supplier: **MANETTA ENTERPRISES INC DBA MANETTA INDUSTRIES**

**PO BOX 517**

**BROOKLYN, NY 11222**

**UNITED STATES**

Supplier

Contact:

**Manetta Mr. Rick**

**(718) 9375656**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**6434 Net 30**

Effective Start Date Effective End Date Amount Agreed (USD)

**05/15/2013 05/14/2016 6,071,000.00**

**Notes: WESTCHESTER FREEZE PITS**

**THIS IS A 3 YEAR CONTRACT**

**YEAR 1 - 5/15/13-5/14/14**

**YEAR 2 - 5/15/14-5/14/15**

**YEAR 3 - 5/15/15-5/14/16**

Pricing will remain firm for the first year with escalation of 2.0% for the 2nd year and 4.0% for the 3rd year, respectively from year one pricing. Contractor agrees not to seek pricing relief during the term of the blanket purchase agreement.

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The Scope of Work shall include but not limited to: excavation services to construct freeze pits for Westchester County.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$6,071,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN

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INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.



## Contains Confidential Commercial Information

This Blanket Purchase Agreement will be performed in accordance with the following:

- Con Edison's invitation to RFQ# 87064 and all documents referenced therein.
- Con Edison's Clarifications/Addendum to the bid event dated 2/22/13 & 3/1/13.
- Con Edison's Standard Terms and Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Con Edison's Special Conditions dated 2/1/13.
- Con Edison's Trenching Manual - CONST-007 Revision Number 7 dated November 2009.
- Con Edison's Gas Trenching Manual approved 7/8/11 R0.
- Manetta's Industries Inc. signed Offer, Exception, Disclosure, and Compliance Form dated 3/7/13.
- Manetta Industries Inc. took no exceptions.

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection"). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Mike Perrino 212-460-3209 perrinom@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Mike Perrino 212-460-3209 perrinom@coned.com.

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Reference Documents: Freeze pit contract special terms and conditions.doc

EH&S DOCS.doc

AMENDMENT 2.docx

DRAWINGS FOR AMENDMENT 1.pdf

AMENDMENT 1.docx

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Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

6-10-08 R1.pdf

PRE AWARD DOCS.pdf

Gas Trenching Manual dated 7-8-11 R0.pdf

COMPLIANCE.pdf

Trenching Manual - Final Nov. 2009 R7.pdf

EXHIBIT A TO DISCLOSURE FORM SIGNED BY MANETTA

ENTERPISE INC DATED 3.7.13.doc

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 05/15/2013 EACH 1.00

WESTCHESTER FREEZE PITS

Negotiation Line Note To Supplier

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In the space provided please provide a total price for the three year grand total and attach the detailed price sheet in your response.

This is a three year contract

Please make sure you fill out the Optional tab too.

2 NS0200119 EACH 1.00

SERVICE /EQUIPMENT +10%

3 NS0200120 HOUR 93.00

FOREMAN - STRAIGHT TIME - YEAR 1

4 NS0200121 HOUR 120.00

FOREMAN - OVERTIME - YEAR 1

5 NS0200122 HOUR 140.00

FOREMAN - PREMIUM TIME - YEAR 1

6 NS0200123 HOUR 91.00

LABORER - STRAIGHT TIME - YEAR 1

7 NS0200124 HOUR 115.00

LABORER - OVERTIME - YEAR 1

8 NS0200125 HOUR 140.00

LABORER - PREMIUM TIME - YEAR 1

9 NS0200126 HOUR 91.00

DRILLRUNNER - STRAIGHT TIME - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

10 NS0200127 HOUR 126.00

DRILLRUNNER - OVERTIME - YEAR 1

11 NS0200128 HOUR 126.00

DRILLRUNNER - OT/SAT - YEAR 1

12 NS0200129 HOUR 175.00

DRILLRUNNER - PREMIUM TIME - YEAR 1

13 NS0200130 HOUR 95.00

COMPRESSOR ENG - STRAIGHT TIME - YEAR 1

14 NS0200131 HOUR 170.00

COMPRESSOR ENG - OVERTIME - YEAR 1

15 NS0200132 HOUR 170.00

COMPRESSOR ENG - PREMIUM TIME - YEAR 1

16 NS0200133 HOUR 120.00

OPER ENG/MAINT MAN - STRAIGHT TIME - YEAR 1

17 NS0200134 HOUR 210.00

OPER ENG/MAINT MAN - OVERTIME - YEAR 1

18 NS0200135 HOUR 210.00

OPER ENG/MAINT MAN - PREMIUM TIME - YEAR 1

19 NS0200136 HOUR 90.00

CHAUFFEUR - STRAIGHT TIME - YEAR 1

20 NS0200137 HOUR 95.00

CHAUFFEUR - OVERTIME - YEAR 1

21 NS0200138 HOUR 125.00

CHAUFFEUR OT/SAT - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

22 NS0200139 HOUR 150.00

CHAUFFEUR - PREMIUM TIME - YEAR 1

23 NS0200140 HOUR 119.28

TIMBERMAN - STRAIGHT TIME - YEAR 1

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24 NS0200141 HOUR 150.00  
TIMBERMAN - OVERTIME - YEAR 1  
25 NS0200142 HOUR 175.00  
TIMBERMAN - PREMIUM TIME - YEAR 1  
26 NS0200143 HOUR 120.00  
WELDER - STRAIGHT TIME - YEAR 1  
27 NS0200144 HOUR 210.00  
WELDER - OVERTIME - YEAR 1  
28 NS0200145 HOUR 210.00  
WELDER - PREMIUM TIME - YEAR 1  
29 NS0200146 HOUR 90.00  
RAKER - STRAIGHT TIME - YEAR 1  
30 NS0200147 HOUR 130.00  
RAKER - OVERTIME - YEAR 1  
31 NS0200148 HOUR 170.00  
RAKER - PREMIUM TIME - YEAR 1  
32 NS0200149 HOUR 24.96  
LOADER/BACKHOE, DYNAHOE 190 - STRAIGHT TIME - YEAR 1  
33 NS0200150 HOUR 23.04  
LOADER/BACKHOE, DYNAHOE 190 - OVERTIME - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
34 NS0200151 Daily 199.74  
LOADER/BACKHOE, DYNAHOE 190 - DAILY - YEAR 1  
35 NS0200674 WEEK 1398.19  
LOADER/BACKHOE, DYNAHOE 190 - WEEKLY - YEAR 1  
36 NS0200673 MONTH 5592.78  
LOADER/BACKHOE, DYNAHOE 190 - MONTHLY - YEAR 1  
37 NS0200154 HOUR 42.25  
LOADER/BACKHOE W/ HYRAM - STRAIGHT TIME - YEAR 1  
38 NS0200155 HOUR 41.29  
LOADER/BACKHOE W/ HYRAM - OVERTIME - YEAR 1  
39 NS0200156 Daily 338.02  
LOADER/BACKHOE W/ HYRAM - DAILY - YEAR 1  
40 NS0200671 WEEK 2356.20  
LOADER/BACKHOE W/ HYRAM - WEEKLY - YEAR 1  
41 NS0200672 MONTH 9424.80  
LOADER/BACKHOE W/ HYRAM - MONTHLY - YEAR 1  
42 NS0200159 HOUR 72.02  
CRANE, SELF-PROPELLED 25 TO 40 TONS - STRAIGHT TIME - YEAR 1  
43 NS0200160 HOUR 69.14  
CRANE, SELF-PROPELLED 25 TO 40 TONS - OVERTIME - YEAR 1  
44 NS0200161 HOUR 29.76  
CRANE, SELF-PROPELLED 15 TO 20 TONS - STRAIGHT TIME - YEAR 1  
45 NS0200162 HOUR 28.80  
CRANE, SELF-PROPELLED 15 TO 20 TONS - OVERTIME - YEAR 1  
46 NS0200163 HOUR 5.76  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FORKLIFT - STRAIGHT TIME - YEAR 1  
47 NS0200164 HOUR 4.80  
FORKLIFT - OVERTIME - YEAR 1

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48 NS0200165 HOUR 1.98  
JACKHAMMER - STRAIGHT TIME - YEAR 1  
49 NS0200166 HOUR 1.88  
JACKHAMMER - OVERTIME - YEAR 1  
50 NS0200167 Daily 15.84  
JACKHAMMER - DAILY - YEAR 1  
51 NS0200168 HOUR 24.00  
ROLLER, 12 TON - STRAIGHT TIME - YEAR 1  
52 NS0200169 HOUR 22.08  
ROLLER, 12 TON - OVERTIME - YEAR 1  
53 NS0200170 Daily 192.06  
ROLLER, 12 TON - DAILY - YEAR 1  
54 NS0200171 HOUR 2.77  
GENERATOR SET, 7.5KW - STRAIGHT TIME - YEAR 1  
55 NS0200172 HOUR 2.40  
GENERATOR SET, 7.5KW - OVERTIME - YEAR 1  
56 NS0200173 Daily 22.17  
GENERATOR SET, 7.5KW - DAILY - YEAR 1  
57 NS0200174 HOUR 9.60  
DARDA SPLITTER - STRAIGHT TIME - YEAR 1  
58 NS0200175 HOUR 7.68  
DARDA SPLITTER - OVERTIME - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
59 NS0200176 HOUR 11.52  
PORTABLE COMPRESSOR, 250 CFM - STRAIGHT TIME - YEAR 1  
60 NS0200177 HOUR 9.60  
PORTABLE COMPRESSOR, 250 CFM - OVERTIME - YEAR 1  
61 NS0200178 Daily 103.95  
PORTABLE COMPRESSOR, 250 CFM - DAILY - YEAR 1  
62 NS0200670 WEEK 519.75  
PORTABLE COMPRESSOR, 250 CFM - WEEKLY - YEAR 1  
63 NS0200180 HOUR 3.84  
PORTABLE PUMP W/ 2-25' HOSES, 3" - STRAIGHT TIME - YEAR 1  
64 NS0200181 HOUR 3.36  
PORTABLE PUMP W/ 2-25' HOSES, 3" - OVERTIME - YEAR 1  
65 NS0200182 Daily 30.72  
PORTABLE PUMP W/ 2-25' HOSES, 3" - DAILY - YEAR 1  
66 NS0200183 HOUR 6.23  
WELDING MACHINE, 300A - STRAIGHT TIME - YEAR 1  
67 NS0200184 HOUR 5.94  
WELDING MACHINE, 300A - OVERTIME - YEAR 1  
68 NS0200185 Daily 49.89  
WELDING MACHINE, 300A - DAILY - YEAR 1  
69 NS0200186 HOUR 19.20  
TRUCK W/ COMPRESSOR, 250 CFM - STRAIGHT TIME - YEAR 1  
70 NS0200187 HOUR 17.28  
TRUCK W/ COMPRESSOR, 250 CFM - OVERTIME - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
71 NS0200188 Daily 153.64  
TRUCK W/ COMPRESSOR, 250 CFM - DAILY - YEAR 1

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72 NS0200189 HOUR 1.92  
TAMPER - STRAIGHT TIME - YEAR 1  
73 NS0200190 HOUR 1.92  
TAMPER - OVERTIME - YEAR 1  
74 NS0200191 Daily 15.36  
TAMPER - DAILY - YEAR 1  
75 NS0200192 HOUR 32.67  
CONCRETE SAW W/ DIAMOND BLADE - STRAIGHT TIME - YEAR 1  
76 NS0200193 HOUR 30.72  
CONCRETE SAW W/ DIAMOND BLADE - OVERTIME - YEAR 1  
77 NS0200194 Daily 261.36  
CONCRETE SAW W/ DIAMOND BLADE - DAILY - YEAR 1  
78 NS0200195 HOUR 35.64  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - STRAIGHT TIME - YEAR 1  
79 NS0200196 HOUR 33.61  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - OVERTIME - YEAR 1  
80 NS0200197 Daily 240.07  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - DAILY - YEAR 1  
81 NS0200198 HOUR 18.81  
DUMP TRUCKS: 5-6 CY - STRAIGHT TIME - YEAR 1  
82 NS0200199 HOUR 17.28  
DUMP TRUCKS: 5-6 CY - OVERTIME - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
83 NS0200200 Daily 148.84  
DUMP TRUCKS: 5-6 CY - DAILY - YEAR 1  
84 NS0200201 WEEK 720.22  
DUMP TRUCKS: 5-6 CY - WEEKLY - YEAR 1  
85 NS0200202 HOUR 23.04  
DUMP TRUCKS: 8-10 CY - STRAIGHT TIME - YEAR 1  
86 NS0200203 HOUR 24.00  
DUMP TRUCKS: 8-10 CY - OVERTIME - YEAR 1  
87 NS0200204 Daily 177.65  
DUMP TRUCKS: 8-10 CY - DAILY - YEAR 1  
88 NS0200205 WEEK 864.27  
DUMP TRUCKS: 8-10 CY - WEEKLY - YEAR 1  
89 NS0200206 HOUR 43.21  
DUMP TRUCKS:12-18 CY - STRAIGHT TIME - YEAR 1  
90 NS0200207 HOUR 48.01  
DUMP TRUCKS:12-18 CY - OVERTIME - YEAR 1  
91 NS0200208 Daily 384.12  
DUMP TRUCKS:12-18 CY - DAILY - YEAR 1  
92 NS0200209 WEEK 2574.00  
DUMP TRUCKS:12-18 CY - WEEKLY - YEAR 1  
93 NS0200210 HOUR 43.21  
DUMP TRUCKS: 20CY - STRAIGHT TIME - YEAR 1  
94 NS0200211 HOUR 48.01  
DUMP TRUCKS: 20CY - OVERTIME - YEAR 1  
95 NS0200212 Daily 384.12  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
DUMP TRUCKS: 20CY - DAILY - YEAR 1

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96 NS0200213 WEEK 2574.00  
DUMP TRUCKS: 20CY - WEEKLY - YEAR 1  
97 NS0200214 HOUR 19.20  
FLATBED (RACK) TRUCK - STRAIGHT TIME - YEAR 1  
98 NS0200215 HOUR 16.32  
FLATBED (RACK) TRUCK - OVERTIME - YEAR 1  
99 NS0200216 Daily 110.43  
FLATBED (RACK) TRUCK - DAILY - YEAR 1  
100 NS0200217 WEEK 537.76  
FLATBED (RACK) TRUCK - WEEKLY - YEAR 1  
101 NS0200218 HOUR 9.60  
PICK-UP TRUCK - STRAIGHT TIME - YEAR 1  
102 NS0200219 HOUR 7.68  
PICK-UP TRUCK - OVERTIME - YEAR 1  
103 NS0200220 Daily 72.02  
PICK-UP TRUCK - DAILY - YEAR 1  
104 NS0200221 WEEK 360.11  
PICK-UP TRUCK - WEEKLY - YEAR 1  
105 NS0200222 Daily 144.04  
FIELD OFFICE (UP TO 32FT) - DAILY - YEAR 1  
106 NS0200223 WEEK 480.15  
FIELD OFFICE (UP TO 32FT) - WEEKLY - YEAR 1  
107 NS0200675 EACH 1824.57  
COMPACTION TEST FULL DAY - YEAR 3  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
108 NS0200225 Daily 19.20  
PORTO SAN - DAILY - YEAR 1  
109 NS0200226 WEEK 124.83  
PORTO SAN - WEEKLY - YEAR 1  
110 NS0200227 EACH 4.80  
TRAFFIC PLATES - PER PLATE/PER DAY - YEAR 1  
111 NS0200228 HOUR 14.40  
50 KW GENERATOR - STRAIGHT TIME - YEAR 1  
112 NS0200229 HOUR 19.20  
50 KW GENERATOR - OVERTIME - YEAR 1  
113 NS0200230 Daily 115.23  
50 KW GENERATOR - DAILY - YEAR 1  
114 NS0200231 WEEK 806.65  
50 KW GENERATOR - WEEKLY - YEAR 1  
115 NS0200232 HOUR 19.20  
75 KW GENERATOR - STRAIGHT TIME - YEAR 1  
116 NS0200233 HOUR 19.20  
75 KW GENERATOR - OVERTIME - YEAR 1  
117 NS0200234 Daily 153.64  
75 KW GENERATOR - DAILY - YEAR 1  
118 NS0200235 WEEK 1075.53  
75 KW GENERATOR - WEEKLY - YEAR 1  
119 NS0200236 HOUR 28.80  
100 KW GENERATOR - STRAIGHT TIME - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

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120 NS0200237 HOUR 38.01  
100 KW GENERATOR - OVERTIME - YEAR 1  
121 NS0200238 Daily 230.47  
100 KW GENERATOR - DAILY - YEAR 1  
122 NS0200239 WEEK 1613.30  
100 KW GENERATOR - WEEKLY - YEAR 1  
123 NS0200240 HOUR 48.01  
PORTABLE COMPRESSOR, 600 CFM - STRAIGHT TIME - YEAR 1  
124 NS0200241 HOUR 44.17  
PORTABLE COMPRESSOR, 600 CFM - OVERTIME - YEAR 1  
125 NS0200242 Daily 384.12  
PORTABLE COMPRESSOR, 600 CFM - DAILY - YEAR 1  
126 NS0200243 WEEK 1822.59  
PORTABLE COMPRESSOR, 600 CFM - WEEKLY - YEAR 1  
127 NS0200244 HOUR 9.603  
LIGHT TOWER - STRAIGHT TIME - YEAR 1  
128 NS0200245 HOUR 8.64  
LIGHT TOWER - OVERTIME - YEAR 1  
129 NS0200246 Daily 76.82  
LIGHT TOWER - DAILY - YEAR 1  
130 NS0200247 WEEK 364.91  
LIGHT TOWER - WEEKLY - YEAR 1  
131 NS0200248 HOUR 5.76  
DIETZ ARROW BOARD - STRAIGHT TIME - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
132 NS0200249 HOUR 4.80  
DIETZ ARROW BOARD - OVERTIME - YEAR 1  
133 NS0200250 Daily 43.21  
DIETZ ARROW BOARD - DAILY - YEAR 1  
134 NS0200251 WEEK 215.32  
DIETZ ARROW BOARD - WEEKLY - YEAR 1  
135 NS0200252 HOUR 69.30  
MESSAGE BOARD - STRAIGHT TIME - YEAR 1  
136 NS0200253 HOUR 69.30  
MESSAGE BOARD - OVERTIME - YEAR 1  
137 NS0200254 Daily 554.40  
MESSAGE BOARD - DAILY - YEAR 1  
138 NS0200255 WEEK 2772.00  
MESSAGE BOARD - WEEKLY - YEAR 1  
139 NS0200256 Daily 5.76  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - DAILY - YEAR 1  
140 NS0200257 WEEK 40.33  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - WEEKLY - YEAR 1  
141 NS0200258 MONTH 172.85  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - MONTHLY - YEAR 1  
142 NS0200259 Daily 4.80  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - DAILY - YEAR 1  
143 NS0200260 WEEK 24.00  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - WEEKLY - YEAR 1  
144 NS0200261 MONTH 96.03  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount

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(USD)

TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - MONTHLY - YEAR 1

145 NS0200262 EACH 18.81

FIRE RATED 5/8" SHEETROCK - YEAR 1

146 NS0200263 ROLL 49.50

6 MIL POLY - YEAR 1

147 NS0200264 CUBIC

YARD

99.00

ASPHALT HOT MIX - YEAR 1

148 NS0200265 EACH 24.75

ASPHALT SEALER - YEAR 1

149 NS0200266 CUBIC

YARD

54.45

BLUE STONE, 3/4" - YEAR 1

150 NS0200267 CUBIC

YARD

118.80

CONCRETE 3200 PSI < 8 CY - YEAR 1

151 NS0200268 CUBIC

YARD

158.40

CONCRETE 3200 PSI > 8 CY - YEAR 1

152 NS0200269 CUBIC

YARD

168.30

CONCRETE 5000 PSI < 8 CY - YEAR 1

153 NS0200270 CUBIC

YARD

188.10

CONCRETE 5000 PSI > 8 CY - YEAR 1

154 NS0200271 EACH .79

EXPANSION JOINTS 1/2" X 4" - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

155 NS0200272 EACH 5.94

INSULATION BOARD; 2" - YEAR 1

156 NS0200273 BAG 11.88

PORTLAND CEMENT; 90LB BAG - YEAR 1

157 NS0200274 CUBIC

YARD

34.65

RECYCLED CRUSHED STONE - YEAR 1

158 NS0200275 ROLL 54.45

ROOF PAPER - YEAR 1

159 NS0200276 BOX 21.78

RUBBER GLOVES/PVC & NITRILE - YEAR 1

160 NS0200277 CUBIC

YARD

54.45

SAND < 8 CY - YEAR 1

161 NS0200278 CUBIC

YARD

44.55

SAND > 8 CY - YEAR 1



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162 NS0200279 CUBIC

YARD

44.55

SAND AND GRAVEL MIX - YEAR 1

163 NS0200280 BAG 6.93

SAND BAGS - YEAR 1

164 NS0200281 EACH 4.95

4" PLASTIC PIPE - YEAR 1

165 NS0200282 EACH 9.90

SONOTUBE 8" - YEAR 1

166 NS0200283 EACH 14.85

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

SONOTUBE 12" - YEAR 1

167 NS0200284 EACH 23.76

SONOTUBE 18" - YEAR 1

168 NS0200285 EACH 29.70

SONOTUBE 24"/FOOT - YEAR 1

169 NS0200286 BAG 14.85

TEMP MAC - YEAR 1

170 NS0200287 EACH 8.91

TYVEK BOOTS - YEAR 1

171 NS0200288 EACH 24.75

TYVEK SARANEX SUIT - YEAR 1

172 NS0200289 EACH 37.62

DUMP FEE - YEAR 1

173 NS0200290 EACH 297.00

COMPACTION TEST 1/2 DAY - YEAR 1

174 NS0200291 EACH 594.00

COMPACTION TEST FULL DAY - YEAR 1

175 NS0200292 PAIL 123.75

BONDING AGENT; 5 GAL PAIL - YEAR 1

176 NS0200293 ROLL 123.75

ORANGE FENCE; 100FT ROLL - YEAR 1

177 NS0200294 EACH .99

BRICK - YEAR 1

178 NS0200295 BAG 13.86

MORTAR - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

179 NS0200296 EACH 19.80

NO. 5 REBAR; 20FT PC - YEAR 1

180 NS0200297 EACH 23.76

NO. 6 REBAR; 20FT PC - YEAR 1

181 NS0200298 BAG 39.60

CALCIUM CHLORIDE; 50LB BAG - YEAR 1

182 NS0200299 HOUR 19.80

BOBCAT, HOURLY RATE - YEAR 1

183 NS0200300 EACH .89

2X4 - YEAR 1

184 NS0200301 FOOT 1.13

2X6 - YEAR 1

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185 NS0200302 FOOT 2.47  
2X10 - YEAR 1  
186 NS0200303 FOOT 3.46  
3X10 - YEAR 1  
187 NS0200304 FOOT 1.98  
4X4 - YEAR 1  
188 NS0200305 FOOT 3.96  
6X6 - YEAR 1  
189 NS0200306 FOOT 4.95  
8X8 - YEAR 1  
190 NS0200307 FOOT 5.94  
6X8 - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

191 NS0200309 FOOT 9.90  
12X12 - YEAR 1  
192 NS0200310 EACH 49.50  
3/4 INCH PLYWOOD - YEAR 1  
193 NS0200311 FOOT 1.98  
FIRE RATED 2X4 - YEAR 1  
194 NS0200312 HOUR 94.86  
FOREMAN - STRAIGHT TIME - YEAR 2  
195 NS0200313 HOUR 122.40  
FOREMAN - OVERTIME - YEAR 2  
196 NS0200314 HOUR 142.80  
FOREMAN - PREMIUM TIME - YEAR 2  
197 NS0200315 HOUR 92.82  
LABORER - STRAIGHT TIME - YEAR 2  
198 NS0200316 HOUR 117.30  
LABORER - OVERTIME - YEAR 2  
199 NS0200317 HOUR 142.80  
LABORER - PREMIUM TIME - YEAR 2  
200 NS0200318 HOUR 92.82  
DRILLRUNNER - STRAIGHT TIME - YEAR 2  
201 NS0200319 HOUR 128.52  
DRILLRUNNER - OVERTIME - YEAR 2  
202 NS0200320 HOUR 128.52  
DRILLRUNNER - OT/SAT - YEAR 2

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(USD)

Amount

(USD)

203 NS0200321 HOUR 178.50  
DRILLRUNNER - PREMIUM TIME - YEAR 2  
204 NS0200322 HOUR 96.90  
COMPRESSOR ENG - STRAIGHT TIME - YEAR 2  
205 NS0200323 HOUR 173.40  
COMPRESSOR ENG - OVERTIME - YEAR 2  
206 NS0200324 HOUR 173.40  
COMPRESSOR ENG - PREMIUM TIME - YEAR 2  
207 NS0200325 HOUR 122.40  
OPER ENG/MAINT MAN - STRAIGHT TIME - YEAR 2  
208 NS0200326 HOUR 214.20  
OPER ENG/MAINT MAN - OVERTIME - YEAR 2

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209 NS0200327 HOUR 214.20  
OPER ENG/MAINT MAN - PREMIUM TIME - YEAR 2  
210 NS0200328 HOUR 91.80  
CHAUFFEUR - STRAIGHT TIME - YEAR 2  
211 NS0200329 HOUR 96.90  
CHAUFFEUR - OVERTIME - YEAR 2  
212 NS0200330 HOUR 127.50  
CHAUFFEUR OT/SAT - YEAR 2  
213 NS0200331 HOUR 153.00  
CHAUFFEUR - PREMIUM TIME - YEAR 2  
214 NS0200332 HOUR 121.66  
TIMBERMAN - STRAIGHT TIME - YEAR 2  
215 NS0200333 HOUR 153.00  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
TIMBERMAN - OVERTIME - YEAR 2  
216 NS0200334 HOUR 178.50  
TIMBERMAN - PREMIUM TIME - YEAR 2  
217 NS0200335 HOUR 122.40  
WELDER - STRAIGHT TIME - YEAR 2  
218 NS0200336 HOUR 214.20  
WELDER - OVERTIME - YEAR 2  
219 NS0200337 HOUR 214.20  
WELDER - PREMIUM TIME - YEAR 2  
220 NS0200338 HOUR 91.80  
RAKER - STRAIGHT TIME - YEAR 2  
221 NS0200339 HOUR 132.60  
RAKER - OVERTIME - YEAR 2  
222 NS0200340 HOUR 173.40  
RAKER - PREMIUM TIME - YEAR 2  
223 NS0200341 HOUR 25.45  
LOADER/BACKHOE, DYNAHOE 190 - STRAIGHT TIME - YEAR 2  
224 NS0200342 HOUR 23.50  
LOADER/BACKHOE, DYNAHOE 190 - OVERTIME - YEAR 2  
225 NS0200343 Daily 203.73  
LOADER/BACKHOE, DYNAHOE 190 - DAILY - YEAR 2  
226 NS0200344 WEEK 1426.15  
LOADER/BACKHOE, DYNAHOE 190 - WEEKLY - YEAR 2  
227 NS0200345 MONTH 5704.63  
LOADER/BACKHOE, DYNAHOE 190 - MONTHLY - YEAR 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
228 NS0200346 HOUR 43.09  
LOADER/BACKHOE W/ HYRAM - STRAIGHT TIME - YEAR 2  
229 NS0200347 HOUR 42.11  
LOADER/BACKHOE W/ HYRAM - OVERTIME - YEAR 2  
230 NS0200348 Daily 344.78  
LOADER/BACKHOE W/ HYRAM - DAILY - YEAR 2  
231 NS0200349 WEEK 2403.32  
LOADER/BACKHOE W/ HYRAM - WEEKLY - YEAR 2  
232 NS0200350 MONTH 9613.296  
LOADER/BACKHOE W/ HYRAM - MONTHLY - YEAR 2

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233 NS0200351 HOUR 73.46  
CRANE, SELF-PROPELLED 25 TO 40 TONS - STRAIGHT TIME - YEAR 2  
234 NS0200352 HOUR 70.52  
CRANE, SELF-PROPELLED 25 TO 40 TONS - OVERTIME - YEAR 2  
235 NS0200353 HOUR 30.35  
CRANE, SELF-PROPELLED 15 TO 20 TONS - STRAIGHT TIME - YEAR 2  
236 NS0200354 HOUR 29.37  
CRANE, SELF-PROPELLED 15 TO 20 TONS - OVERTIME - YEAR 2  
237 NS0200355 HOUR 5.87  
FORKLIFT - STRAIGHT TIME - YEAR 2  
238 NS0200356 HOUR 4.89  
FORKLIFT - OVERTIME - YEAR 2  
239 NS0200357 HOUR 2.01  
JACKHAMMER - STRAIGHT TIME - YEAR 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
240 NS0200358 HOUR 1.91  
JACKHAMMER - OVERTIME - YEAR 2  
241 NS0200359 Daily 16.15  
JACKHAMMER - DAILY - YEAR 2  
242 NS0200360 HOUR 24.48  
ROLLER, 12 TON - STRAIGHT TIME - YEAR 2  
243 NS0200361 HOUR 22.52  
ROLLER, 12 TON - OVERTIME - YEAR 2  
244 NS0200362 Daily 195.90  
ROLLER, 12 TON - DAILY - YEAR 2  
245 NS0200363 HOUR 2.82  
GENERATOR SET, 7.5KW - STRAIGHT TIME - YEAR 2  
246 NS0200364 HOUR 2.44  
GENERATOR SET, 7.5KW - OVERTIME - YEAR 2  
247 NS0200365 Daily 22.61  
GENERATOR SET, 7.5KW - DAILY - YEAR 2  
248 NS0200366 HOUR 9.79  
DARDA SPLITTER - STRAIGHT TIME - YEAR 2  
249 NS0200367 HOUR 7.83  
DARDA SPLITTER - OVERTIME - YEAR 2  
250 NS0200368 HOUR 11.75  
PORTABLE COMPRESSOR, 250 CFM - STRAIGHT TIME - YEAR 2  
251 NS0200369 HOUR 9.79  
PORTABLE COMPRESSOR, 250 CFM - OVERTIME - YEAR 2  
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(USD)  
Amount  
(USD)  
252 NS0200370 Daily 106.02  
PORTABLE COMPRESSOR, 250 CFM - DAILY - YEAR 2  
253 NS0200371 WEEK 530.14  
PORTABLE COMPRESSOR, 250 CFM - WEEKLY - YEAR 2  
254 NS0200372 HOUR 3.91  
PORTABLE PUMP W/ 2-25' HOSES, 3" - STRAIGHT TIME - YEAR 2  
255 NS0200373 HOUR 3.42  
PORTABLE PUMP W/ 2-25' HOSES, 3" - OVERTIME - YEAR 2  
256 NS0200374 Daily 31.33  
PORTABLE PUMP W/ 2-25' HOSES, 3" - DAILY - YEAR 2

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257 NS0200375 HOUR 6.35  
WELDING MACHINE, 300A - STRAIGHT TIME - YEAR 2  
258 NS0200376 HOUR 6.05  
WELDING MACHINE, 300A - OVERTIME - YEAR 2  
259 NS0200377 Daily 50.88  
WELDING MACHINE, 300A - DAILY - YEAR 2  
260 NS0200378 HOUR 19.58  
TRUCK W/ COMPRESSOR, 250 CFM - STRAIGHT TIME - YEAR 2  
261 NS0200379 HOUR 17.62  
TRUCK W/ COMPRESSOR, 250 CFM - OVERTIME - YEAR 2  
262 NS0200380 Daily 156.71  
TRUCK W/ COMPRESSOR, 250 CFM - DAILY - YEAR 2  
263 NS0200381 HOUR 1.95  
TAMPER - STRAIGHT TIME - YEAR 2  
264 NS0200382 HOUR 1.95  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
TAMPER - OVERTIME - YEAR 2  
265 NS0200383 Daily 15.66  
TAMPER - DAILY - YEAR 2  
266 NS0200384 HOUR 33.32  
CONCRETE SAW W/ DIAMOND BLADE - STRAIGHT TIME - YEAR 2  
267 NS0200385 HOUR 31.33  
CONCRETE SAW W/ DIAMOND BLADE - OVERTIME - YEAR 2  
268 NS0200386 Daily 266.58  
CONCRETE SAW W/ DIAMOND BLADE - DAILY - YEAR 2  
269 NS0200387 HOUR 36.35  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - STRAIGHT TIME - YEAR 2  
270 NS0200388 HOUR 34.28  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - OVERTIME - YEAR 2  
271 NS0200389 Daily 244.87  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - DAILY - YEAR 2  
272 NS0200390 HOUR 19.18  
DUMP TRUCKS: 5-6 CY - STRAIGHT TIME - YEAR 2  
273 NS0200391 HOUR 17.62  
DUMP TRUCKS: 5-6 CY - OVERTIME - YEAR 2  
274 NS0200392 Daily 151.81  
DUMP TRUCKS: 5-6 CY - DAILY - YEAR 2  
275 NS0200393 WEEK 734.62  
DUMP TRUCKS: 5-6 CY - WEEKLY - YEAR 2  
276 NS0200394 HOUR 23.50  
DUMP TRUCKS: 8-10 CY - STRAIGHT TIME - YEAR 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
277 NS0200395 HOUR 24.48  
DUMP TRUCKS: 8-10 CY - OVERTIME - YEAR 2  
278 NS0200396 Daily 181.20  
DUMP TRUCKS: 8-10 CY - DAILY - YEAR 2  
279 NS0200397 WEEK 881.55  
DUMP TRUCKS: 8-10 CY - WEEKLY - YEAR 2  
280 NS0200398 HOUR 44.07  
DUMP TRUCKS:12-18 CY - STRAIGHT TIME - YEAR 2

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281 NS0200399 HOUR 48.97  
DUMP TRUCKS:12-18 CY - OVERTIME - YEAR 2  
282 NS0200400 Daily 391.80  
DUMP TRUCKS:12-18 CY - DAILY - YEAR 2  
283 NS0200401 WEEK 2625.48  
DUMP TRUCKS:12-18 CY - WEEKLY - YEAR 2  
284 NS0200402 HOUR 44.07  
DUMP TRUCKS: 20CY - STRAIGHT TIME - YEAR 2  
285 NS0200403 HOUR 48.97  
DUMP TRUCKS: 20CY - OVERTIME - YEAR 2  
286 NS0200404 Daily 391.80  
DUMP TRUCKS: 20CY - DAILY - YEAR 2  
287 NS0200405 WEEK 2625.48  
DUMP TRUCKS: 20CY - WEEKLY - YEAR 2  
288 NS0200406 HOUR 19.58  
FLATBED (RACK) TRUCK - STRAIGHT TIME - YEAR 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
289 NS0200407 HOUR 16.64  
FLATBED (RACK) TRUCK - OVERTIME - YEAR 2  
290 NS0200408 Daily 112.63  
FLATBED (RACK) TRUCK - DAILY - YEAR 2  
291 NS0200409 WEEK 548.51  
FLATBED (RACK) TRUCK - WEEKLY - YEAR 2  
292 NS0200410 HOUR 9.792  
PICK-UP TRUCK - STRAIGHT TIME - YEAR 2  
293 NS0200411 HOUR 7.83  
PICK-UP TRUCK - OVERTIME - YEAR 2  
294 NS0200412 Daily 73.46  
PICK-UP TRUCK - DAILY - YEAR 2  
295 NS0200413 WEEK 367.31  
PICK-UP TRUCK - WEEKLY - YEAR 2  
296 NS0200414 Daily 146.92  
FIELD OFFICE (UP TO 32FT) - DAILY - YEAR 2  
297 NS0200415 WEEK 489.75  
FIELD OFFICE (UP TO 32FT) - WEEKLY - YEAR 2  
298 NS0205209 MONTH 1861.06  
FIELD OFFICE (UP TO 32FT) - MONTHLY - YEAR 2  
299 NS0200417 Daily 19.58  
PORTO SAN - DAILY - YEAR 2  
300 NS0200418 WEEK 127.32  
PORTO SAN - WEEKLY - YEAR 2  
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(USD)  
Amount  
(USD)  
301 NS0200419 EACH 4.89  
TRAFFIC PLATES - PER PLATE/PER DAY - YEAR 2  
302 NS0200420 HOUR 14.688  
50 KW GENERATOR - STRAIGHT TIME - YEAR 2  
303 NS0200421 HOUR 19.58  
50 KW GENERATOR - OVERTIME - YEAR 2  
304 NS0200422 Daily 117.53  
50 KW GENERATOR - DAILY - YEAR 2

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305 NS0200423 WEEK 822.78  
50 KW GENERATOR - WEEKLY - YEAR 2  
306 NS0200424 HOUR 19.58  
75 KW GENERATOR - STRAIGHT TIME - YEAR 2  
307 NS0200425 HOUR 19.58  
75 KW GENERATOR - OVERTIME - YEAR 2  
308 NS0200426 Daily 156.71  
75 KW GENERATOR - DAILY - YEAR 2  
309 NS0200427 WEEK 1097.04  
75 KW GENERATOR - WEEKLY - YEAR 2  
310 NS0200428 HOUR 29.37  
100 KW GENERATOR - STRAIGHT TIME - YEAR 2  
311 NS0200429 HOUR 38.77  
100 KW GENERATOR - OVERTIME - YEAR 2  
312 NS0200430 Daily 235.07  
100 KW GENERATOR - DAILY - YEAR 2  
313 NS0200431 WEEK 1645.56  
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(USD)  
Amount  
(USD)  
100 KW GENERATOR - WEEKLY - YEAR 2  
314 NS0200432 HOUR 48.97  
PORTABLE COMPRESSOR, 600 CFM - STRAIGHT TIME - YEAR 2  
315 NS0200433 HOUR 45.05  
PORTABLE COMPRESSOR, 600 CFM - OVERTIME - YEAR 2  
316 NS0200434 Daily 391.80  
PORTABLE COMPRESSOR, 600 CFM - DAILY - YEAR 2  
317 NS0200435 WEEK 1859.04  
PORTABLE COMPRESSOR, 600 CFM - WEEKLY - YEAR 2  
318 NS0200436 HOUR 9.79  
LIGHT TOWER - STRAIGHT TIME - YEAR 2  
319 NS0200437 HOUR 8.81  
LIGHT TOWER - OVERTIME - YEAR 2  
320 NS0200438 Daily 78.35  
LIGHT TOWER - DAILY - YEAR 2  
321 NS0200439 WEEK 372.20  
LIGHT TOWER - WEEKLY - YEAR 2  
322 NS0200440 HOUR 5.87  
DIETZ ARROW BOARD - STRAIGHT TIME - YEAR 2  
323 NS0200441 HOUR 4.89  
DIETZ ARROW BOARD - OVERTIME - YEAR 2  
324 NS0200442 Daily 44.07  
DIETZ ARROW BOARD - DAILY - YEAR 2  
325 NS0200443 WEEK 219.62  
DIETZ ARROW BOARD - WEEKLY - YEAR 2  
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(USD)  
Amount  
(USD)  
326 NS0200444 HOUR 70.68  
MESSAGE BOARD - STRAIGHT TIME - YEAR 2  
327 NS0200445 HOUR 70.68  
MESSAGE BOARD - OVERTIME - YEAR 2  
328 NS0200446 Daily 565.48  
MESSAGE BOARD - DAILY - YEAR 2

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329 NS0200447 WEEK 2827.44  
MESSAGE BOARD - WEEKLY - YEAR 2  
330 NS0200448 Daily 5.87  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - DAILY - YEAR 2  
331 NS0200449 WEEK 41.13  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - WEEKLY - YEAR 2  
332 NS0205210 MONTH 176.30  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - MONTHLY - YEAR 2  
333 NS0200451 Daily 4.89  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - DAILY - YEAR 2  
334 NS0200452 WEEK 24.48  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - WEEKLY - YEAR 2  
335 NS0205211 MONTH 97.95  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - MONTHLY - YEAR 2  
336 NS0200454 EACH 19.18  
FIRE RATED 5/8" SHEETROCK - YEAR 2  
337 NS0200455 ROLL 50.49  
6 MIL POLY - YEAR 2  
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(USD)  
Amount  
(USD)  
338 NS0200456 CUBIC  
YARD  
100.98  
ASPHALT HOT MIX - YEAR 2  
339 NS0200457 EACH 25.24  
ASPHALT SEALER - YEAR 2  
340 NS0200458 CUBIC  
YARD  
55.53  
BLUE STONE, 3/4" - YEAR 2  
341 NS0200459 CUBIC  
YARD  
121.17  
CONCRETE 3200 PSI < 8 CY - YEAR 2  
342 NS0200460 CUBIC  
YARD  
161.56  
CONCRETE 3200 PSI > 8 CY - YEAR 2  
343 NS0200461 CUBIC  
YARD  
171.66  
CONCRETE 5000 PSI < 8 CY - YEAR 2  
344 NS0200462 CUBIC  
YARD  
191.86  
CONCRETE 5000 PSI > 8 CY - YEAR 2  
345 NS0200463 EACH .80  
EXPANSION JOINTS 1/2" X 4" - YEAR 2  
346 NS0200464 EACH 6.05  
INSULATION BOARD; 2" - YEAR 2  
347 NS0200465 BAG 12.11  
PORTLAND CEMENT; 90LB BAG - YEAR 2  
348 NS0200466 CUBIC  
YARD  
35.34  
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(USD)

Amount

(USD)

RECYCLED CRUSHED STONE - YEAR 2

349 NS0200467 ROLL 55.53

ROOF PAPER - YEAR 2

350 NS0200468 BOX 22.21

RUBBER GLOVES/PVC & NITRILE - YEAR 2

351 NS0200469 CUBIC

YARD

55.53

SAND < 8 CY - YEAR 2

352 NS0200470 CUBIC

YARD

45.44

SAND > 8 CY - YEAR 2

353 NS0200471 CUBIC

YARD

45.44

SAND AND GRAVEL MIX - YEAR 2

354 NS0200472 BAG 7.06

SAND BAGS - YEAR 2

355 NS0200473 EACH 5.04

4" PLASTIC PIPE - YEAR 2

356 NS0200474 EACH 10.09

SONOTUBE 8" - YEAR 2

357 NS0200475 EACH 15.14

SONOTUBE 12" - YEAR 2

358 NS0200476 EACH 24.23

SONOTUBE 18" - YEAR 2

359 NS0200477 EACH 30.29

SONOTUBE 24"/FOOT - YEAR 2

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Amount

(USD)

360 NS0200478 BAG 15.14

TEMP MAC - YEAR 2

361 NS0200479 EACH 9.08

TYVEK BOOTS - YEAR 2

362 NS0200480 EACH 25.24

TYVEK SARANEX SUIT - YEAR 2

363 NS0200481 EACH 38.37

DUMP FEE - YEAR 2

364 NS0200482 EACH 302.94

COMPACTION TEST 1/2 DAY - YEAR 2

365 NS0200483 EACH 605.88

COMPACTION TEST FULL DAY - YEAR 2

366 NS0200484 PAIL 126.22

BONDING AGENT; 5 GAL PAIL - YEAR 2

367 NS0200485 ROLL 126.22

ORANGE FENCE; 100FT ROLL - YEAR 2

368 NS0200486 EACH 1.00

BRICK - YEAR 2

369 NS0200487 BAG 14.13

MORTAR - YEAR 2

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370 NS0200488 EACH 20.19  
NO. 5 REBAR; 20FT PC - YEAR 2  
371 NS0200489 EACH 24.23  
NO. 6 REBAR; 20FT PC - YEAR 2  
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Amount  
(USD)  
372 NS0200490 BAG 40.39  
CALCIUM CHLORIDE; 50LB BAG - YEAR 2  
373 NS0200491 HOUR 20.19  
BOBCAT, HOURLY RATE - YEAR 2  
374 NS0200492 EACH .90  
2X4 - YEAR 2  
375 NS0200493 FOOT 1.15  
2X6 - YEAR 2  
376 NS0200494 FOOT 2.51  
2X10 - YEAR 2  
377 NS0200495 FOOT 3.52  
3X10 - YEAR 2  
378 NS0200496 FOOT 2.01  
4X4 - YEAR 2  
379 NS0200497 FOOT 4.03  
6X6 - YEAR 2  
380 NS0200498 FOOT 5.04  
8X8 - YEAR 2  
381 NS0200499 FOOT 6.05  
6X8 - YEAR 2  
382 NS0200501 FOOT 10.09  
12X12 - YEAR 2  
383 NS0200502 EACH 50.49  
3/4 INCH PLYWOOD - YEAR 2  
384 NS0200503 FOOT 2.01  
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(USD)  
Amount  
(USD)  
FIRE RATED 2X4 - YEAR 2  
385 NS0200504 HOUR 96.72  
FOREMAN - STRAIGHT TIME - YEAR 3  
386 NS0200505 HOUR 124.80  
FOREMAN - OVERTIME - YEAR 3  
387 NS0200506 HOUR 145.60  
FOREMAN - PREMIUM TIME - YEAR 3  
388 NS0200507 HOUR 94.64  
LABORER - STRAIGHT TIME - YEAR 3  
389 NS0200508 HOUR 119.60  
LABORER - OVERTIME - YEAR 3  
390 NS0200509 HOUR 145.60  
LABORER - PREMIUM TIME - YEAR 3  
391 NS0200510 HOUR 94.64  
DRILLRUNNER - STRAIGHT TIME - YEAR 3  
392 NS0200511 HOUR 131.04  
DRILLRUNNER - OVERTIME - YEAR 3  
393 NS0200512 HOUR 131.04  
DRILLRUNNER - OT/SAT - YEAR 3

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394 NS0200513 HOUR 182.00  
DRILLRUNNER - PREMIUM TIME - YEAR 3  
395 NS0200514 HOUR 98.80  
COMPRESSOR ENG - STRAIGHT TIME - YEAR 3  
396 NS0200515 HOUR 176.80  
COMPRESSOR ENG - OVERTIME - YEAR 3  
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(USD)  
Amount  
(USD)  
397 NS0200516 HOUR 176.80  
COMPRESSOR ENG - PREMIUM TIME - YEAR 3  
398 NS0200517 HOUR 124.80  
OPER ENG/MAINT MAN - STRAIGHT TIME - YEAR 3  
399 NS0200518 HOUR 218.40  
OPER ENG/MAINT MAN - OVERTIME - YEAR 3  
400 NS0200519 HOUR 218.40  
OPER ENG/MAINT MAN - PREMIUM TIME - YEAR 3  
401 NS0200520 HOUR 93.60  
CHAUFFEUR - STRAIGHT TIME - YEAR 3  
402 NS0200521 HOUR 98.80  
CHAUFFEUR - OVERTIME - YEAR 3  
403 NS0200522 HOUR 130.00  
CHAUFFEUR OT/SAT - YEAR 3  
404 NS0200523 HOUR 156.00  
CHAUFFEUR - PREMIUM TIME - YEAR 3  
405 NS0200524 HOUR 124.05  
TIMBERMAN - STRAIGHT TIME - YEAR 3  
406 NS0200525 HOUR 156.00  
TIMBERMAN - OVERTIME - YEAR 3  
407 NS0200526 HOUR 182.00  
TIMBERMAN - PREMIUM TIME - YEAR 3  
408 NS0200527 HOUR 124.80  
WELDER - STRAIGHT TIME - YEAR 3  
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(USD)  
Amount  
(USD)  
409 NS0200528 HOUR 218.40  
WELDER - OVERTIME - YEAR 3  
410 NS0200529 HOUR 218.40  
WELDER - PREMIUM TIME - YEAR 3  
411 NS0200530 HOUR 93.60  
RAKER - STRAIGHT TIME - YEAR 3  
412 NS0200531 HOUR 135.20  
RAKER - OVERTIME - YEAR 3  
413 NS0200532 HOUR 176.80  
RAKER - PREMIUM TIME - YEAR 3  
414 NS0200533 HOUR 25.95  
LOADER/BACKHOE, DYNAHOE 190 - STRAIGHT TIME - YEAR 3  
415 NS0200534 HOUR 23.96  
LOADER/BACKHOE, DYNAHOE 190 - OVERTIME - YEAR 3  
416 NS0200535 Daily 207.72  
LOADER/BACKHOE, DYNAHOE 190 - DAILY - YEAR 3  
417 NS0200536 WEEK 1454.11  
LOADER/BACKHOE, DYNAHOE 190 - WEEKLY - YEAR 3

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418 NS0200537 TANK 5816.49  
LOADER/BACKHOE, DYNAHOE 190 - MONTHLY - YEAR 3  
419 NS0200538 HOUR 43.94  
LOADER/BACKHOE W/ HYRAM - STRAIGHT TIME - YEAR 3  
420 NS0200539 HOUR 42.94  
LOADER/BACKHOE W/ HYRAM - OVERTIME - YEAR 3  
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(USD)  
Amount  
(USD)  
421 NS0200540 Daily 351.54  
LOADER/BACKHOE W/ HYRAM - DAILY - YEAR 3  
422 NS0200541 WEEK 2450.44  
LOADER/BACKHOE W/ HYRAM - WEEKLY - YEAR 3  
423 NS0200542 MONTH 9801.79  
LOADER/BACKHOE W/ HYRAM - MONTHLY - YEAR 3  
424 NS0200543 HOUR 74.90  
CRANE, SELF-PROPELLED 25 TO 40 TONS - STRAIGHT TIME - YEAR 3  
425 NS0200544 HOUR 71.90  
CRANE, SELF-PROPELLED 25 TO 40 TONS - OVERTIME - YEAR 3  
426 NS0200545 HOUR 30.95  
CRANE, SELF-PROPELLED 15 TO 20 TONS - STRAIGHT TIME - YEAR 3  
427 NS0200546 HOUR 29.95  
CRANE, SELF-PROPELLED 15 TO 20 TONS - OVERTIME - YEAR 3  
428 NS0200547 HOUR 5.99  
FORKLIFT - STRAIGHT TIME - YEAR 3  
429 NS0200548 HOUR 4.99  
FORKLIFT - OVERTIME - YEAR 3  
430 NS0200549 HOUR 2.05  
JACKHAMMER - STRAIGHT TIME - YEAR 3  
431 NS0200550 HOUR 1.95  
JACKHAMMER - OVERTIME - YEAR 3  
432 NS0200551 Daily 16.47  
JACKHAMMER - DAILY - YEAR 3  
433 NS0200552 HOUR 24.96  
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Amount  
(USD)  
ROLLER, 12 TON - STRAIGHT TIME - YEAR 3  
434 NS0200553 HOUR 22.96  
ROLLER, 12 TON - OVERTIME - YEAR 3  
435 NS0200554 Daily 199.74  
ROLLER, 12 TON - DAILY - YEAR 3  
436 NS0200555 HOUR 2.88  
GENERATOR SET, 7.5KW - STRAIGHT TIME - YEAR 3  
437 NS0200556 HOUR 2.49  
GENERATOR SET, 7.5KW - OVERTIME - YEAR 3  
438 NS0200557 Daily 23.05  
GENERATOR SET, 7.5KW - DAILY - YEAR 3  
439 NS0200558 HOUR 9.98  
DARDA SPLITTER - STRAIGHT TIME - YEAR 3  
440 NS0200559 HOUR 7.98  
DARDA SPLITTER - OVERTIME - YEAR 3  
441 NS0200560 HOUR 11.98  
PORTABLE COMPRESSOR, 250 CFM - STRAIGHT TIME - YEAR 3

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442 NS0200561 HOUR 9.98  
PORTABLE COMPRESSOR, 250 CFM - OVERTIME - YEAR 3  
443 NS0200562 Daily 108.10  
PORTABLE COMPRESSOR, 250 CFM - DAILY - YEAR 3  
444 NS0200563 WEEK 540.54  
PORTABLE COMPRESSOR, 250 CFM - WEEKLY - YEAR 3  
445 NS0200564 HOUR 3.99  
PORTABLE PUMP W/ 2-25' HOSES, 3" - STRAIGHT TIME - YEAR 3  
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Amount  
(USD)  
446 NS0200565 HOUR 3.49  
PORTABLE PUMP W/ 2-25' HOSES, 3" - OVERTIME - YEAR 3  
447 NS0200566 Daily 31.94  
PORTABLE PUMP W/ 2-25' HOSES, 3" - DAILY - YEAR 3  
448 NS0200567 HOUR 6.47  
WELDING MACHINE, 300A - STRAIGHT TIME - YEAR 3  
449 NS0200568 HOUR 6.17  
WELDING MACHINE, 300A - OVERTIME - YEAR 3  
450 NS0200569 Daily 51.88  
WELDING MACHINE, 300A - DAILY - YEAR 3  
451 NS0200570 HOUR 19.96  
TRUCK W/ COMPRESSOR, 250 CFM - STRAIGHT TIME - YEAR 3  
452 NS0200571 HOUR 17.97  
TRUCK W/ COMPRESSOR, 250 CFM - OVERTIME - YEAR 3  
453 NS0200572 Daily 159.78  
TRUCK W/ COMPRESSOR, 250 CFM - DAILY - YEAR 3  
454 NS0200573 HOUR 1.99  
TAMPER - STRAIGHT TIME - YEAR 3  
455 NS0200574 HOUR 1.99  
TAMPER - OVERTIME - YEAR 3  
456 NS0200575 Daily 15.97  
TAMPER - DAILY - YEAR 3  
457 NS0200576 HOUR 33.97  
CONCRETE SAW W/ DIAMOND BLADE - STRAIGHT TIME - YEAR 3  
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Amount  
(USD)  
458 NS0200577 HOUR 31.94  
CONCRETE SAW W/ DIAMOND BLADE - OVERTIME - YEAR 3  
459 NS0200578 Daily 271.81  
CONCRETE SAW W/ DIAMOND BLADE - DAILY - YEAR 3  
460 NS0200579 HOUR 37.06  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - STRAIGHT TIME - YEAR 3  
461 NS0200580 HOUR 34.95  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - OVERTIME - YEAR 3  
462 NS0200581 Daily 249.67  
TRUCK W/ WELDING MACHINE, 400A & BURNING OUTFIT - DAILY - YEAR 3  
463 NS0200582 HOUR 19.56  
DUMP TRUCKS: 5-6 CY - STRAIGHT TIME - YEAR 3  
464 NS0200583 HOUR 17.97  
DUMP TRUCKS: 5-6 CY - OVERTIME - YEAR 3  
465 NS0200584 Daily 154.79  
DUMP TRUCKS: 5-6 CY - DAILY - YEAR 3

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466 NS0200585 WEEK 749.02  
DUMP TRUCKS: 5-6 CY - WEEKLY - YEAR 3  
467 NS0200586 HOUR 23.96  
DUMP TRUCKS: 8-10 CY - STRAIGHT TIME - YEAR 3  
468 NS0200587 HOUR 24.96  
DUMP TRUCKS: 8-10 CY - OVERTIME - YEAR 3  
469 NS0200588 Daily 184.75  
DUMP TRUCKS: 8-10 CY - DAILY - YEAR 3  
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(USD)  
Amount  
(USD)  
470 NS0200589 WEEK 898.84  
DUMP TRUCKS: 8-10 CY - WEEKLY - YEAR 3  
471 NS0200590 HOUR 44.93  
DUMP TRUCKS:12-18 CY - STRAIGHT TIME - YEAR 3  
472 NS0200591 HOUR 49.93  
DUMP TRUCKS:12-18 CY - OVERTIME - YEAR 3  
473 NS0200592 Daily 399.48  
DUMP TRUCKS:12-18 CY - DAILY - YEAR 3  
474 NS0200593 WEEK 2676.96  
DUMP TRUCKS:12-18 CY - WEEKLY - YEAR 3  
475 NS0200594 HOUR 44.93  
DUMP TRUCKS: 20CY - STRAIGHT TIME - YEAR 3  
476 NS0200595 HOUR 49.93  
DUMP TRUCKS: 20CY - OVERTIME - YEAR 3  
477 NS0200596 Daily 399.48  
DUMP TRUCKS: 20CY - DAILY - YEAR 3  
478 NS0200597 WEEK 2676.96  
DUMP TRUCKS: 20CY - WEEKLY - YEAR 3  
479 NS0200598 HOUR 19.96  
FLATBED (RACK) TRUCK - STRAIGHT TIME - YEAR 3  
480 NS0200599 HOUR 16.97  
FLATBED (RACK) TRUCK - OVERTIME - YEAR 3  
481 NS0200600 Daily 114.84  
FLATBED (RACK) TRUCK - DAILY - YEAR 3  
482 NS0200601 WEEK 559.27  
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(USD)  
Amount  
(USD)  
FLATBED (RACK) TRUCK - WEEKLY - YEAR 3  
483 NS0200602 HOUR 9.98  
PICK-UP TRUCK - STRAIGHT TIME - YEAR 3  
484 NS0200603 HOUR 7.98  
PICK-UP TRUCK - OVERTIME - YEAR 3  
485 NS0200604 Daily 74.90  
PICK-UP TRUCK - DAILY - YEAR 3  
486 NS0200605 WEEK 374.51  
PICK-UP TRUCK - WEEKLY - YEAR 3  
487 NS0200606 Daily 149.80  
FIELD OFFICE (UP TO 32FT) - DAILY - YEAR 3  
488 NS0200607 WEEK 499.35  
FIELD OFFICE (UP TO 32FT) - WEEKLY - YEAR 3  
489 NS0200608 MONTH 1897.55  
FIELD OFFICE (UP TO 32FT) - MONTHLY - YEAR 3

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490 NS0200609 Daily 19.96  
PORTO SAN - DAILY - YEAR 3  
491 NS0200610 WEEK 129.82  
PORTO SAN - WEEKLY - YEAR 3  
492 NS0200611 EACH 4.99  
TRAFFIC PLATES - PER PLATE/PER DAY - YEAR 3  
493 NS0200612 HOUR 14.97  
50 KW GENERATOR - STRAIGHT TIME - YEAR 3  
494 NS0200613 HOUR 19.96  
50 KW GENERATOR - OVERTIME - YEAR 3  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
495 NS0200614 Daily 119.83  
50 KW GENERATOR - DAILY - YEAR 3  
496 NS0200615 WEEK 838.91  
50 KW GENERATOR - WEEKLY - YEAR 3  
497 NS0200616 HOUR 19.96  
75 KW GENERATOR - STRAIGHT TIME - YEAR 3  
498 NS0200617 HOUR 19.96  
75 KW GENERATOR - OVERTIME - YEAR 3  
499 NS0200618 Daily 159.78  
75 KW GENERATOR - DAILY - YEAR 3  
500 NS0200619 WEEK 1118.55  
75 KW GENERATOR - WEEKLY - YEAR 3  
501 NS0200620 HOUR 29.95  
100 KW GENERATOR - STRAIGHT TIME - YEAR 3  
502 NS0200621 HOUR 39.53  
100 KW GENERATOR - OVERTIME - YEAR 3  
503 NS0200622 Daily 239.68  
100 KW GENERATOR - DAILY - YEAR 3  
504 NS0200623 WEEK 1677.83  
100 KW GENERATOR - WEEKLY - YEAR 3  
505 NS0200624 HOUR 49.93  
PORTABLE COMPRESSOR, 600 CFM - STRAIGHT TIME - YEAR 3  
506 NS0200625 HOUR 45.93  
PORTABLE COMPRESSOR, 600 CFM - OVERTIME - YEAR 3  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
507 NS0200626 Daily 399.48  
PORTABLE COMPRESSOR, 600 CFM - DAILY - YEAR 3  
508 NS0200627 WEEK 1895.49  
PORTABLE COMPRESSOR, 600 CFM - WEEKLY - YEAR 3  
509 NS0200628 HOUR 9.98  
LIGHT TOWER - STRAIGHT TIME - YEAR 3  
510 NS0200629 HOUR 8.98  
LIGHT TOWER - OVERTIME - YEAR 3  
511 NS0200630 Daily 79.89  
LIGHT TOWER - DAILY - YEAR 3  
512 NS0200631 WEEK 379.50  
LIGHT TOWER - WEEKLY - YEAR 3  
513 NS0200632 HOUR 5.99  
DIETZ ARROW BOARD - STRAIGHT TIME - YEAR 3

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514 NS0200633 HOUR 4.99  
DIETZ ARROW BOARD - OVERTIME - YEAR 3  
515 NS0200634 Daily 44.93  
DIETZ ARROW BOARD - DAILY - YEAR 3  
516 NS0200635 WEEK 223.93  
DIETZ ARROW BOARD - WEEKLY - YEAR 3  
517 NS0200636 HOUR 72.07  
MESSAGE BOARD - STRAIGHT TIME - YEAR 3  
518 NS0200637 HOUR 72.07  
MESSAGE BOARD - OVERTIME - YEAR 3  
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(USD)  
Amount  
(USD)  
519 NS0200638 Daily 576.57  
MESSAGE BOARD - DAILY - YEAR 3  
520 NS0200639 WEEK 2882.88  
MESSAGE BOARD - WEEKLY - YEAR 3  
521 NS0200640 Daily 5.99  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - DAILY - YEAR 3  
522 NS0200641 WEEK 41.94  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - WEEKLY - YEAR 3  
523 NS0200642 MONTH 179.76  
TRAFFIC PLATES PER PLATE / 3 DIMENSIONS SF - MONTHLY - YEAR 3  
524 NS0200643 Daily 4.99  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - DAILY - YEAR 3  
525 NS0200644 WEEK 24.96  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - WEEKLY - YEAR 3  
526 NS0200645 MONTH 99.87  
TRAFFIC PLATES S.F. BASIS EXTRA. DIMENSIONS - MONTHLY - YEAR 3  
527 NS0200646 EACH 19.56  
FIRE RATED 5/8" SHEETROCK - YEAR 3  
528 NS0200647 ROLL 51.48  
6 MIL POLY - YEAR 3  
529 NS0200648 CUBIC  
YARD  
102.96  
ASPHALT HOT MIX - YEAR 3  
530 NS0200649 EACH 25.74  
ASPHALT SEALER - YEAR 3  
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(USD)  
Amount  
(USD)  
531 NS0200650 CUBIC  
YARD  
56.62  
BLUE STONE, 3/4" - YEAR 3  
532 NS0200651 CUBIC  
YARD  
123.55  
CONCRETE 3200 PSI < 8 CY - YEAR 3  
533 NS0200652 CUBIC  
YARD  
164.73  
CONCRETE 3200 PSI > 8 CY - YEAR 3



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534 NS0200653 CUBIC  
YARD  
175.03  
CONCRETE 5000 PSI < 8 CY - YEAR 3  
535 NS0200654 CUBIC  
YARD  
195.62  
CONCRETE 5000 PSI > 8 CY - YEAR 3  
536 NS0200655 EACH .82  
EXPANSION JOINTS 1/2" X 4" - YEAR 3  
537 NS0200656 EACH 6.17  
INSULATION BOARD; 2" - YEAR 3  
538 NS0200657 BAG 12.35  
PORTLAND CEMENT; 90LB BAG - YEAR 3  
539 NS0200658 CUBIC  
YARD  
36.03  
RECYCLED CRUSHED STONE - YEAR 3  
540 NS0200659 ROLL 56.62  
ROOF PAPER - YEAR 3  
541 NS0200660 BOX 22.65  
RUBBER GLOVES/PVC & NITRILE - YEAR 3  
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(USD)  
Amount  
(USD)  
542 NS0200661 CUBIC  
YARD  
56.62  
SAND < 8 CY - YEAR 3  
543 NS0200662 CUBIC  
YARD  
46.33  
SAND > 8 CY - YEAR 3  
544 NS0200663 CUBIC  
YARD  
46.33  
SAND AND GRAVEL MIX - YEAR 3  
545 NS0200664 BAG 7.20  
SAND BAGS - YEAR 3  
546 NS0200665 EACH 5.14  
4" PLASTIC PIPE - YEAR 3  
547 NS0200666 EACH 10.29  
SONOTUBE 8" - YEAR 3  
548 NS0200667 EACH 15.44  
SONOTUBE 12" - YEAR 3  
549 NS0200668 EACH 24.71  
SONOTUBE 18" - YEAR 3  
550 NS0200669 EACH 30.88  
SONOTUBE 24"/FOOT - YEAR 3  
551 NS0200670 WEEK 15.44  
PORTABLE COMPRESSOR, 250 CFM - WEEKLY - YEAR 1  
552 NS0200671 WEEK 9.26  
LOADER/BACKHOE W/ HYRAM - WEEKLY - YEAR 1  
553 NS0200672 MONTH 25.74  
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(USD)  
Amount  
(USD)

LOADER/BACKHOE W/ HYRAM - MONTHLY - YEAR 1  
554 NS0200673 MONTH 39.12  
LOADER/BACKHOE, DYNAHOE 190 - MONTHLY - YEAR 1  
555 NS0200674 WEEK 308.88  
LOADER/BACKHOE, DYNAHOE 190 - WEEKLY - YEAR 1  
556 NS0200675 EACH 617.76  
COMPACTION TEST FULL DAY - YEAR 3  
557 NS0200676 PAIL 128.70  
BONDING AGENT; 5 GAL PAIL - YEAR 3  
558 NS0200677 ROLL 128.70  
ORANGE FENCE; 100FT ROLL - YEAR 3  
560 NS0200679 BAG 14.41  
MORTAR - YEAR 3  
561 NS0200680 EACH 20.59  
NO. 5 REBAR; 20FT PC - YEAR 3  
562 NS0200681 EACH 24.71  
NO. 6 REBAR; 20FT PC - YEAR 3  
563 NS0200682 BAG 41.18  
CALCIUM CHLORIDE; 50LB BAG - YEAR 3  
564 NS0200683 HOUR 20.59  
BOBCAT, HOURLY RATE - YEAR 3  
565 NS0200684 EACH .92  
2X4 - YEAR 3  
566 NS0200685 FOOT 1.17  
2X6 - YEAR 3

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(USD)

Amount  
(USD)

567 NS0200686 FOOT 2.56  
2X10 - YEAR 3  
568 NS0200687 FOOT 3.59  
3X10 - YEAR 3  
569 NS0200688 FOOT 2.05  
4X4 - YEAR 3  
570 NS0200689 FOOT 4.11  
6X6 - YEAR 3  
571 NS0200690 FOOT 5.14  
8X8 - YEAR 3  
572 NS0200691 FOOT 6.17  
6X8 - YEAR 3  
573 NS0200693 FOOT 10.29  
12X12 - YEAR 3  
574 NS0200694 EACH 51.48  
3/4 INCH PLYWOOD - YEAR 3  
575 NS0200695 FOOT 2.05  
FIRE RATED 2X4 - YEAR 3  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

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

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### 3. Specifications, Plans, and Drawings.

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### 4. Price and Payment.

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a

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Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability

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of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update

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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 Contractor'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.

### **7.Safeguards in Work.**

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractors shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with



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these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Blanket Purchase Agreement 4148801,

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to

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fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

### 12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Blanket Purchase Agreement 4148801,

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### 13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form)

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to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Blanket Purchase Agreement 4148801,

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(ii) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

(iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Blanket Purchase Agreement 4148801,

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. Any price increase or decrease or extension or acceleration of time for performance shall not be

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binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F.Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14.Labor.

A.Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor,(or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Blanket Purchase Agreement 4148801,

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor,(or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise)

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within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Blanket Purchase Agreement 4148801,

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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

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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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on

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a weekly basis, as required by paragraph (C) of this Article, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those



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shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

### 23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### 25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided

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Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

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

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Blanket Purchase Agreement 4148801,

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing.

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Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Blanket Purchase Agreement 4148801,

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly

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furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Blanket Purchase Agreement 4148801,

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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,

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

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

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F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Blanket Purchase Agreement 4148801,

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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

Attention:Purchasing Department  
Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison  
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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.



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### 42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection

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with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

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48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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. Blanket Purchase Agreement 4148801,

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, representatives and Subcontractors have not engaged and will not

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engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### 1. Nature of These Special Conditions

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Blanket Purchase Agreement 4148801,

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Con Edison has met its minimum purchase obligation as set forth below.

##### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

##### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

##### 5. Partial Deliveries

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order

## Contains Confidential Commercial Information

may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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### 6.Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### 7.Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### 8.Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

335692v.2

## Appendix A

### APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

### APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications

Blanket Purchase Agreement 4148801,

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incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### ANTIKICKBACK PROCEDURES

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason

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to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition

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Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the Blanket Purchase Agreement 4148801,

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and

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enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

Blanket Purchase Agreement 4148801,

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**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)



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ATTACHMENT NO. 4

CONTRACTOR: STEP MAR CONTRACTING CORP

PURCHASE ORDER NO.: 4144904

BID COMPARISON:

\$ 4,855,809  
\$ 4,893,668  
\$ 5,651,574  
\$ 5,675,377  
\$ 7,692,528  
\$11,006,360

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4144904**

Revision **2**

PO Approved Date **07/23/2013**

Revision Date **07/23/2013**

Current Buyer **David Blaut**

Supplier: **STEP MAR CONTRACTING CORP**

**COMPASS 321 FORT LEE RD**

**LEONIA, NJ 07605**

**UNITED STATES**

Supplier

Contact:

**JACOVINO MARIO**

**2019475252**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10618 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**06/01/2013 11/30/2015 3,976,000.00**

**Notes:** Per Oracle RFQ 87051, Step Mar Contracting Corp. shall provide supervision, labor, tools and equipment to excavate, and subsequently restore, test pits and other relatively small excavations as needed throughout the Bronx and Manhattan for a thirty month period commencing June 1, 2013.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$3,976,000. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Contract Authorized Funding: \$3,976,000

Contract Term: June 1, 2013 – November 30, 2015

This purchase order will be performed in accordance with & incorporates by reference the following:

- Con Edison RFQ 87051

- All documents referenced in RFQ 87051

- Special Conditions titled PUBLIC IMPROVEMENT'S SPECIAL CONDITIONS MANHATTAN /BRONX TEST PIT P.O.

- Construction Management Trenching Manual Excavation and Installation, Revision 7 dated November 2009

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2009

- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/2012.

- Special Conditions of Purchase - Indefinite Quantity dated 7/1/2012

- Contractor's submitted Compliance & Exception, Offer & Disclosure Forms dated 2/26/2013 (Step Mar took No Exceptions)

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No contractor can perform any work before a hasp is approved by EH&S.

- Contractor shall provide a 100% payment bond in accordance with NYS Finance Law Section 137 and Con Edison Terms and Conditions.

- Contractor is required to submit monthly certified payrolls to Con Edison.

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection" ). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

REVISION 1 - CHANGED BUYER FROM L. PRESOTTO TO D. BLAUT. NO ADDITIONAL CHANGES MADE TO CONTRACT.

REVISION 2 - ADDED 8 SPECIAL COMPASS ITEMS (LINES 85-92) TO BPA. NO OTHER CHANGES MADE TO T&C'S.

Reference Documents: Special Conditions Manhattan and Bronx Test Pit.docx

Trenching Manual - Revision 7.pdf

Step Mar Compliance 20130226.pdf

Step Mar Offer 20131226.pdf

Step Mar Disclosure Form dated 20130226.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0170957 CYLIND

ER

118.00

T1R - STREET/NOBASE/BRKRES

2 NS0170601 SQUARE

FOOT

9.00

T101 - SOLID SHEETING

3 NS0170608 LINEAR

FOOT

12.00

T11 - LL14CONCRETEBASE

4 NS0170609 SQUARE

FOOT

7.00

T110 - VEHICULAR PLATES

5 NS0170611 SQUARE

FOOT

9.00

T112 - STRAPWELDEDPLATES

COMPASS BPA 4144904, 2

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

6 NS0170614 SQUARE

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FOOT  
10.00  
T114 - PLATERENTALMAINT.  
7 NS0170615 SQUARE  
FOOT  
12.00  
T115 - PLATERENTALFORT112  
8 NS0170617 SQUARE  
FOOT  
10.00  
T117 - PEDESTRIAN PLATES  
9 NS0170625 LINEAR  
FOOT  
12.00  
T12 - LL14ASPHALTBRKREST  
10 NS0170640 EACH 2300.00  
T125R - TESTPIT 0.1-4.0 CY  
11 NS0170642 EACH 2600.00  
T126R - TESTPIT 4.1-8.0 CY  
12 NS0170644 EACH 6350.00  
T127R - TESTPIT 8.1-15.0 CY  
13 NS0170646 EACH 9950.00  
T128R - TESTPIT 15.1-25.0 CY  
14 NS0170650 EACH 750.00  
T129R - TESTPIT 0.1-4.0 CY  
15 NS0170660 LINEAR  
FOOT  
12.00  
T13 - LL14ASPHALTBRK  
16 NS0170732 LINEAR  
FOOT  
11.00  
T13RC - SAWCUT,REM,DESPASPH  
17 NS0170734 EACH 190.00  
T14 - COMPACTION TEST  
18 NS0171041 CYLIND  
ER  
425.00  
T2R - STREET/BASE/BRK/REST  
19 NS0171036 CYLIND  
ER  
780.00  
T2CR - B/OPAVMT,RET  
20 NS0171004 LINEAR  
FOOT  
40.00  
T21R - CONCRETE CURBS  
21 NS0171026 LINEAR  
FOOT  
110.00  
T23R - STEELNOSEDCURBS  
22 NS0170975 HOUR 110.00  
T210 - DEWATERING  
23 NS0171143 CYLIND  
ER  
300.00  
T3R - BLOCKSTRBASEBRK  
24 NS0171059 HOUR 96.00  
T301 - LABORER/DRILLRUNNER

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25 NS0171066 HOUR 25.00  
T301D - LAB/DRILLRNROTDIFF  
26 NS0171069 HOUR 43.00  
T301WD - T301WKDNDIFFRL  
27 NS0171060 HOUR 96.00  
T301A - FLAG PERSON W/TOOLS  
COMPASS BPA 4144904, 2  
Proprietary and Confidential Page 4 of 54  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
28 NS0171061 HOUR 25.00  
T301AD - FLGPERSONOTDIFFERENT  
29 NS0171064 HOUR 43.00  
T301AWD - T301AOVERTIMEDIFFRL  
30 NS0171071 HOUR 150.00  
T302 - LAB FOREMAN W/TRUCK  
31 NS0171072 HOUR 25.00  
T302D - LABFOREMW/TRK OTDIFF  
32 NS0171075 HOUR 45.00  
T302WD - T302WKDNDIFFRL  
33 NS0171077 HOUR 150.00  
T303 - TEAMSTER,W/DUMPTRUCK  
34 NS0171078 HOUR 30.00  
T303D - TEAM,W/DMPTRKOTDIFF  
35 NS0171079 HOUR 30.00  
T303ND - TEAM,W/DMPTRKNGTDIFF  
36 NS0171082 HOUR 50.00  
T303WD - T303WKDNDIFFRL  
37 NS0171084 HOUR 40.00  
T304 - COMPR/JHAMMERS  
38 NS0171085 HOUR 40.00  
T304D - T304W/OT DIFF  
39 NS0171086 HOUR 130.00  
T304M - ITEM304W/COMPRENDR  
40 NS0171087 HOUR 70.00  
T304MD - T304W/OTDIFF  
41 NS0171088 HOUR 25.00  
T304MND - T304W/NIGHTDIFF  
42 NS0171091 HOUR 90.00  
T304MWD - 304M-WKNDDIFF  
43 NS0171095 HOUR 150.00  
T305 - OPENG W/BACKHOE  
44 NS0171106 HOUR 90.00  
T305D - T305 W/OT DIFF  
45 NS0171107 HOUR 33.00  
T305ND - T305 W/NGT DIFF  
46 NS0171111 HOUR 100.00  
T305WD - T305WKDNDIFFRL  
47 NS0171113 HOUR 135.00  
T306 - TIMBERMAN/TOOLS/TRAN  
48 NS0171114 HOUR 35.00  
T306D - T306W/OT DIFF  
49 NS0171115 HOUR 25.00  
T306ND - T306W/NGT DIFF  
50 NS0171118 HOUR 40.00  
T306WD - T306WKDNDIFFRL  
51 NS0171123 CYLIND  
ER

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220.00

T31 - BINDER BASE  
52 NS0171129 CYLIND  
ER

220.00

T32 - CONCRETE BASE  
53 NS0171135 LINEAR  
FOOT

10.00

T33 - SAWCUT CONCRETE  
COMPASS BPA 4144904, 2

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

54 NS0171301 CYLIND

ER

125.00

T4R - BLKRESURFNBASEBRKRES

55 NS0171157 CYLIND

ER

95.00

T40A - EXCAONLYMACHINEHAND

56 NS0171158 CYLIND

ER

50.00

T40B - BKFILONLYMACHINEHAND

57 NS0171165 CYLIND

ER

150.00

T41 - EXCAMACHHAND<10FT

58 NS0171171 CYLIND

ER

200.00

T41A - EXCAMACHHAND>10.1

59 NS0171172 CYLIND

ER

330.00

T42 - EXCA100 HAND<10FT

60 NS0171174 CYLIND

ER

470.00

T42A - EXCA100 HAND>10.1

61 NS0171179 CYLIND

ER

150.00

T43 - EXCAMACHINEHAND<10FT

62 NS0171180 CYLIND

ER

200.00

T43A - EXCAMACHHAND>10.1

63 NS0171183 CYLIND

ER

240.00

T44 - EXCA100 HAND<10FT

64 NS0171184 CYLIND

ER

390.00

T44A - EXCA100 HAND>10.1

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65 NS0171323 CYLIND  
ER  
390.00  
T5R - LGHTREINCONRDBRKREST  
66 NS0171303 CYLIND  
ER  
500.00  
T50 - ROCK  
67 NS0171314 CYLIND  
ER  
250.00  
T53 - INTACT MASONRY  
68 NS0171325 CYLIND  
ER  
200.00  
T6 - HEAVYREINCONRDBRK  
69 NS0171329 CYLIND  
ER  
625.00  
T6R - HEAVYREINCONRDBRKRES  
70 NS0171344 CYLIND  
ER  
600.00  
T7R - BRKRESTSDWKDRIV  
71 NS0171354 CYLIND  
ER  
890.00  
T8R - C/B/R/D/RDR/SDWK  
72 NS0171373 SQUARE 50.00  
COMPASS BPA 4144904, 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
T9R - FLAGBLUEZBLKBRKREST  
73 NS0171358 CYLIND  
ER  
80.00  
T91 - CLEANFILL  
74 NS0171360 CYLIND  
ER  
90.00  
T92 - SAND BACKFILL  
75 NS0171365 CYLIND  
ER  
80.00  
T95 - TRUCKFROMSITE  
79 NS0205069 HOUR 240.00  
T501 – TestPitSupportCrew  
80 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
81 NS0168391 EACH 500.00  
ADJ - ADJUSTMENT ITEM  
82 NS0169655 SQUARE  
FOOT  
50.00  
GT-60 - T113W/RECESSPLTS

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83 NS0169656 SQUARE  
FOOT  
50.00  
GT-61 - T112W/RECESSPLTS  
84 NS0169657 SQUARE  
FOOT  
13.00  
GT-62 - RECESSPLATELFITEM  
85 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
86 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
87 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
88 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
89 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
90 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
91 NS0170598 EACH 1.00  
SUBINV - SUBCONTRACTINVOICE  
92 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### Appendix A - Required Clauses and Certifications

## **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

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

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"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 work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not Blanket Purchase Agreement 4144904,

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to

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Con Edison for such review and approval prior to their implementation.

4.Price and Payment.

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A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B.Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C.For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance

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of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

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5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal

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laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Blanket Purchase Agreement 4144904,

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9.Contractor's Performance.

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power,

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transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for



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O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### (ii)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### (iii)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Blanket Purchase Agreement 4144904,

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14.Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Blanket Purchase Agreement 4144904,

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State

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Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Blanket Purchase Agreement 4144904,

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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

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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 T&M basis shall be subject to Article 12 (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.

F.Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.

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A.The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost

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increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents,

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representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Blanket Purchase Agreement 4144904,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all

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hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H.If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20.Vehicle Spills. Contractor 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 Blanket Purchase Agreement 4144904,

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21.Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23.Inspection and Tests and Correction of Defects.

A.Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Blanket Purchase Agreement 4144904,

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part

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of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### 25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

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Section Manager,  
Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien,



## **Contains Confidential Commercial Information**

including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Blanket Purchase Agreement 4144904,

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability

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except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Blanket Purchase Agreement 4144904,

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in

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irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. **Infringement.** If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. **Indemnification.** To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. **Insurance.** Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. **Employment related insurance.**

(i) **Workers' Compensation Insurance** as required by law.

(ii) **Employer's Liability Insurance**, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without Con Edison's prior

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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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Blanket Purchase Agreement 4144904,

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Blanket Purchase Agreement 4144904,

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

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In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default.

Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether

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or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Blanket Purchase Agreement 4144904,

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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 Blanket Purchase Agreement 4144904,

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or

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certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48.Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49.Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50.Governing Law. The Contract shall be interpreted 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.

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

52.Submission to Jurisdiction/Choice of Forum.

A.Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process



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may be served as stated above whether or not it may be properly served in a different manner.  
B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1. Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time

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Con Edison has met its minimum purchase obligation as set forth below.

### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

### 5. Partial Deliveries

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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### 6. Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### 7. Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### 8. Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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## Appendix A

### APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other Party to the contract with Con Edison

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is referred to as the "Contractor")

### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications Blanket Purchase Agreement 4144904,

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incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled

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"Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the Blanket Purchase Agreement 4144904,

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "

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Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### Signatures

Blanket Purchase Agreement 4144904,

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### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 5

CONTRACTOR: VALI INDUSTRIES INC

PURCHASE ORDER NO.: 4145395

BID COMPARISON:

\$ 6,293,009  
\$ 7,010,709  
\$ 7,119,606  
\$ 7,404,000  
\$ 8,423,500  
\$ 8,550,963  
\$19,210,520

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COMPASS BPA 4145395, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4145395**

Revision **0**

PO Approved Date **05/23/2013**

Revision Date

Current Buyer **David Blaut**

Supplier: **VALI INDUSTRIES INC**

**COMPASS 90 SCOTT AVE**

**BROOKLYN, NY 11237**

**UNITED STATES**

Supplier

Contact:

**ALI JR VINCENT**

**(718) 821-5555**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10075 Immediate N/A**

Effective Start Date Effective End Date Amount Agreed (USD)

**05/01/2013 04/30/2015 5,887,500.00**

**Notes:** Installation of Fiber Optic Conduit to Various locations throughout Manhattan, Bronx, Brooklyn and Queens.

**THIS IS A 2 YEAR CONTRACT WITH OPTION FOR A 3RD YEAR.**

The 3rd year option is solely at Con Edison's discretion.

**PRICING WILL REMAIN FIRM FOR THE TERM OF THE CONTRACT.**

**IF 3RD YEAR IS OPTIONED THERE WILL BE AN ESCALATION 1.07 RESPECTIVELY FROM YEAR ONE PRICING.**

---

The Scope of Work shall include but not limited to: Furnishing qualified and certified labor, supervision, and equipment to install Fiber Optic conduit into Con Edison's electric distribution facilities. Perform breaking, trucking and disposal of various thicknesses of roadway and sidewalk, all excavations, conduit/pipe/structure installation, backfilling, installing of base concrete, asphalt binder, full flag sidewalk restoration per NYCDOT regulations.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER COMPASS BPA 4145395, 0**

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**BLANKET PURCHASE AGREEMENT IS \$5,887,500. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND**

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UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.

This agreement will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison's invitation to RFQ# 73023 and all documents referenced therein.
- Con Edison's Clarifications/Addendum dated 1/31/13 & 2/7/13.
- Con Edison's Standard Terms and Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Con Edison's 2013 – 2015 Fiber Optic Trenching Contract Special Conditions dated 1/28/13 Revision 1.
- Con Edison's Trenching Manual - CONST-007 Revision Number 7 dated November 2009.
- Con Edison's Gas Trenching Manual approved 7-8-11 R0
- Vali's Industries Inc signed Offer, Exception, Disclosure, and Compliance Forms dated 2/8/13.
- Vali Industries Inc. took no exceptions. \_\_\_\_\_

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection" ). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Mike Perrino 212-460-3209 perrinom@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Mike Perrino 212-460-3209 perrinom@coned.com.

Reference Documents: PRE AWARD MEETING DOCS.pdf

COMPLIANCE FORM.pdf

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AMENDMENT 1.docx

2013 SPG Fiber Optic Special Conditions REVISED.docx

AMENDMENT 2.docx

Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

6-10-08 R1.pdf

Trenching Manual - Final Nov. 2009 R7.pdf

Gas Trenching Manual dated 7-8-11 R0.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0170838 EACH 4250.00

T156 - B/O,DISPBOX/CONDUITS

2 NS0170979 EACH 900.00



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T211 - MOBILIZATION  
3 NS0170987 HOUR 285.00  
T212 - PREMIUMCREWHOUR  
4 NS0170994 HOUR 285.00  
T213 - NIGHTPREMIUMCREWHR  
5 NS0170999 EACH 1000.00  
T215 - MOB WITHIN 4HRS  
6 NS0170609 SQUARE  
FOOT  
6.00  
T110 - VEHICULAR PLATES  
7 NS0170632 EACH 1662.50  
T125 - TESTPIT 0.1-4.0 CY  
8 NS0170641 EACH 2375.00  
T126 - TESTPIT 4.1-8.0 CY  
9 NS0171201 LINEAR  
FOOT  
65.00  
T46 - LINEARFT 3-0FTORLESS  
10 NS0171207 LINEAR  
FOOT  
75.00  
T46A - LF 3.0FTOR LESS LL14  
11 NS0171241 LINEAR  
FOOT  
121.00  
T47 - LINFT 3.1-5.0FT  
12 NS0171247 LINEAR  
FOOT  
139.90  
T47A - LINFT 3.1-5.0FT LL14  
13 NS0171303 CYLIND  
ER  
300.00  
T50 - ROCK  
14 NS0171307 CYLIND  
ER  
855.00  
T51 - ROCK REMOVAL-DISPOSE  
15 NS0171309 CYLIND  
ER  
570.00  
T51H - ROCKEXAVDRILLSPLIT  
16 NS0171314 CYLIND  
ER  
350.00  
T53 - INTACT MASONRY  
17 NS0171145 CYLIND  
ER  
1200.00  
T400 - FURN,INSTALPAVNOEXCV  
18 NS0171404 LINEAR 24.75  
COMPASS BPA 4145395, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
TRS424 - TRAF CONT STRIP 6IN

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19 NS0171405 LINEAR  
FOOT  
35.00  
TRS425 - TRAF STRIP >6IN  
20 NS0171400 EACH 4750.00  
TPCSL1 - PCSLTSTRUCTSMALL1  
21 NS0171378 EACH 9500.00  
TFC1 - FCSTRUCT1SMALL  
22 NS0170538 EACH 3500.00  
SL002 - ECXCLRDUCTREPLCABLE  
23 NS0170539 EACH 4500.00  
SL002A - SL002PROTECTSTREET  
24 NS0170542 LINEAR  
FOOT  
104.50  
SL003 - RELAYSERVICECONDUIT  
25 NS0170543 LINEAR  
FOOT  
141.50  
SL003A - SL003PROTECTSTREET  
26 NS0170961 EACH 3900.00  
T200 - LUMPSUMLAYOUTS  
27 NS0170962 EACH 4900.00  
T200A - T200 FOR PROTECTSTR  
28 NS0168415 SET 300.00  
CP-6 - CABLEPULL4-2/0  
29 NS0168417 SET 1450.00  
CP-7 - CABLEPULL<2/0  
30 NS0170951 CYLIND  
ER  
1000.00  
T190 - STRUCTURALCONC<5CY  
31 NS0170880 EACH 1650.00  
T171RG - REGRADEEXIST=<25SF  
32 NS0170887 EACH 1900.00  
T172RG - REGRADEEXIST=<40SF  
33 NS0170896 EACH 2900.00  
T173RG - REGDEEXIST40TO60SF  
34 NS0170905 EACH 3400.00  
T174RG - REGRADEEXIST>60SF  
35 NS0168241 CYLIND  
ER  
950.00  
75M - REPLACE SLAB/CASTING  
36 NS0170926 LINEAR  
FOOT  
23.75  
T181 - ROD AND MANDREL  
37 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
38 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
39 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
40 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
41 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
42 NS0168423 EACH 1.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

EQPINV - EQUIPMENTINVOICE

43 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

44 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

45 NS0170598 EACH 1.00

SUBINV - SUBCONTRACTINVOICE

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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56. Gift Policy and Unlawful Conduct

Appendix A - Required Clauses and Certifications

### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

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

"Con Edison" - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" - The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

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"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contract shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4.Price and Payment.

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A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the

## **Contains Confidential Commercial Information**

Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to

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Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7.Safeguards in Work.

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations,



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Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Blanket Purchase Agreement 4145395,

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by

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Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Blanket Purchase Agreement 4145395,

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet

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any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### 13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### (i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### (ii) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

#### (iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue

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Book for Construction Equipment" or  
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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Blanket Purchase Agreement 4145395,

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours.

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In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work.

Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Blanket Purchase Agreement 4145395,

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.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 T&M or other cost reimbursable basis.

B.Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C.For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F.Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost

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reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.

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A.The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the

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actual project schedule, and other records and documents, if any, explaining the alleged cost Blanket Purchase Agreement 4145395,

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully

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set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Blanket Purchase Agreement 4145395,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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 Blanket Purchase Agreement 4145395,

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21.Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23.Inspection and Tests and Correction of Defects.

A.Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i)halt the continuation of such Work; and
- (ii)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii)perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

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In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work  
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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

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27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section

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137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

### **31. Other Contractors.**

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Blanket Purchase Agreement 4145395,

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33. Termination for Convenience.**

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement

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stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Blanket Purchase Agreement 4145395,

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Blanket Purchase Agreement 4145395,

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor shall indemnify and hold Con Edison and its affiliates

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(including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as

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additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Blanket Purchase Agreement 4145395,

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Blanket Purchase Agreement 4145395,

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or

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painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison



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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48.Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49.Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50.Governing Law. The Contract shall be interpreted 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. Blanket Purchase Agreement 4145395,

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

52.Submission to Jurisdiction/Choice of Forum.

A.Contractors 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.Contractors 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53.Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54.Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to

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receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56.Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1.Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time

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Con Edison has met its minimum purchase obligation as set forth below.

##### **2.Maximum and Minimum Quantities**

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If

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no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

### **3.Orders for Goods or Services**

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

### **4.Terms and Conditions**

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

### **5.Partial Deliveries**

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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### **6.Shipping Notices**

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### **7.Expenditure Limitation**

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### **8.Completion of Performance**

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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## **Appendix A**

### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications

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incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

Blanket Purchase Agreement 4145395,

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to

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the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the Blanket Purchase Agreement 4145395,

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section

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2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Signatures

Blanket Purchase Agreement 4145395,

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### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Title (Title) (Date) (Date)



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ATTACHMENT NO. 6

CONTRACTOR: TRIUMPH CONSTRUCTION CORP

PURCHASE ORDER NO.: 4149353

BID COMPARISON:

\$ 82,369,292  
\$ 86,850,616  
\$ 87,654,627  
\$ 89,835,809  
\$ 96,768,933  
\$114,870,536

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COMPASS BPA 4149353, 6  
Proprietary and Confidential Page 1 of 57  
**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **COMPASS BPA**  
Order **4149353**

Revision **6**  
PO Approved Date **07/08/2013**  
Revision Date **07/08/2013**

Current Buyer **David Blaut**  
Supplier: **TRIUMPH CONSTRUCTION CORP**  
**COMPASS 1354 SENECA AVE**  
**BRONX, NY 10474**  
**UNITED STATES**

Supplier  
Contact:  
**JACOBS SHIRLEY**  
**(718) 861-6060**

Key  
ConEd  
Contact:  
**David Blaut**  
Ship To: **4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Bill To: **PO Box 799**  
**Cooper Station**  
**New York, NY 10276-0799**  
**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**9277 Immediate DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)  
**05/15/2013 05/14/2016 75,500,000.00**

**Notes: MANHATTAN AREA EAST (ELECTRIC) TRENCHING CONTRACT.**  
**THIS IS A 3 YEAR CONTRACT.**

YEAR 1 - 5/15/13-5/14/14  
YEAR 2 - 5/15/14-5/14/15  
YEAR 3 - 5/15/15-5/14/16

Pricing will remain firm for the first year with escalation of 3.0 % for the 2nd year and 6.0 % for the 3rd year, respectively from year one pricing.

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The Scope of Work shall include but not limited to: The work will involve breaking, trucking and disposal of various thicknesses of roadway and sidewalk, all excavations, conduit/pipe/structure installation, backfilling, installing of base concrete, asphalt binder, cable pulling, full flag sidewalk restoration, and full top roadway final restoration per NYCDOT regulations.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.  
EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER THIS BLANKET PURCHASE AGREEMENT IS \$75,500,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE COMPASS BPA 4149353, 6

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CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.

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This agreement will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison's invitation to RFQ# 74016 and all documents referenced therein including attachments B,C,D,E,F,G,H,I
- Con Edison's Amendments dated 1/24/13 (1), 1/28/13 (2) & 1/30/13 (3)
- Con Edison's Standard Terms and Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Con Edison's Electric Service Contract Work Scope Document and Special Conditions dated 1/7/13.
- Con Edison's Trenching Manual - CONST-007 Revision Number 7 dated November 2009.
- Con Edison's Gas Trenching Manual approved 7/8/11 R0.
- Triumph Construction Inc. signed Offer, Exception, Disclosure, and Compliance Forms dated 1/14/13.
- Triumph Construction Inc. took no exceptions.

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Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection"). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Mike Perrino 212-460-3209 perrinom@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Mike Perrino 212-460-3209 perrinom@coned.com.

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REVISION 3 - EXPIRED LINE 11 - T112 AND REPLACED IT WITH LINE 79 - T112A DUE TO WRONG NS# BEING SELECTED FOR THE BPA (PRICING REMAINED THE SAME). NO OTHER CHANGES MADE TO THE CONTRACT.

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REVISION 1 & 2 - INTERNAL CHANGES MADE TO BPA. NO OTHER CHANGES MADE TO THE CONTRACT.

REVISION 5 - ADDED LINES 80-118 PER MANHATTAN GAS CONSTRUCTION REQUEST. NO OTHER CHANGES MADE TO BPA.

REVISION 4 - INTERNAL CHANGES MADE TO BPA. NO OTHER CHANGES MADE TO THE CONTRACT.

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

6-10-08 R1.pdf

Gas Trenching Manual dated 7-8-11 R0.pdf

Copy of Attachment H.xlsx

Attachment J.doc

Attachment G.pdf

Attachment F.xlsx

Attachment E.xls

Attachment D.xlsx

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Attachment C.xlsx  
PRE AWARD DOCS.pdf  
AMENDMENT 1.docx  
Attachment B.doc  
Area Contract Special Conditions 1-7-2013.docx  
AMENDMENT 2.docx  
Area Contract Bid questions.docx  
RFQ74016 - COMPLIANCE OFFER - TRIUMPH.pdf  
AMENDMENT 3.docx  
EXHIBIT A TO DISCLOSURE FORM.doc  
Trenching Manual - Final Nov. 2009 R7.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 NS0170601 SQUARE

FOOT

1.00

T101 - SOLID SHEETING

2 NS0170603 SQUARE

FOOT

1.00

T103 - TONGUE/GROVESHEETING

3 NS0170608 LINEAR

FOOT

17.00

T11 - LL14CONCRETEBASE

4 NS0170626 SQUARE

FOOT

1.00

T120 - STEELPROTECTIONPLATE

5 NS0170629 EACH 4200.00

T122 - F/I/R SHUNT BOX

6 NS0170630 LINEAR

FOOT

69.50

T122A - LF SHUNT BOX > 50 FT

7 NS0170632 EACH 300.00

T125 - TESTPIT 0.1-4.0 CY

8 NS0170641 EACH 500.00

T126 - TESTPIT 4.1-8.0 CY

9 NS0170651 EACH 1500.00

T129TB - TEST BORING TO 30 FT

10 NS0170609 SQUARE 7.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

FOOT

T110 - VEHICULAR PLATES

11 NS0170611 06/13/2013 SQUARE

FOOT

10.00

T112 - STRAPWELDEDPLATES

12 NS0170614 SQUARE

FOOT

7.00

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T114 - PLATERENTALMAINT.  
13 NS0169656 SQUARE  
FOOT  
10.00  
GT-61 - T112W/RECESSPLTS  
14 NS0170732 LINEAR  
FOOT  
10.00  
T13RC - SAWCUT,REM,DESPASPH  
15 NS0170734 EACH 196.00  
T14 - COMPACTION TEST  
16 NS0170838 EACH 1800.00  
T156 - B/O,DISPBOX/CONDUITS  
17 NS0170844 EACH 15000.00  
T159 - BREAKEXISTMANHOLE  
18 NS0170847 CYLIND  
ER  
1520.00  
T159C - BRKOUTDISPEXISTVAULT  
19 NS0170861 LINEAR  
FOOT  
420.00  
T165 - SEWERCONNECTION<13-0  
20 NS0170863 EACH 6468.00  
T167 - INTERNALSEWERMATERIA  
21 NS0170919 LINEAR  
FOOT  
6.00  
T180 - INST 2"-5"CONDUIT  
22 NS0170927 CYLIND  
ER  
721.00  
T182 - FIBERGLASS CONDUIT  
23 NS0170951 CYLIND  
ER  
1000.00  
T190 - STRUCTURALCONC<5CY  
24 NS0170960 CYLIND  
ER  
65.00  
T2 - STREET/BASE/BRK  
25 NS0170961 EACH 4500.00  
T200 - LUMPSUMLAYOUTS  
26 NS0170962 EACH 5200.00  
T200A - T200 FOR PROTECTSTR  
27 NS0170973 EACH 2500.00  
T200TA - PENETTAVENTSHAFT  
28 NS0170975 HOUR 165.00  
T210 - DEWATERING  
29 NS0170979 EACH 1300.00  
T211 - MOBILIZATION  
30 NS0170999 EACH 2500.00  
T215 - MOB WITHIN 4HRS  
31 NS0171008 EACH 35000.00  
T220 - MOB/DEMOBPILERIG  
32 NS0171009 EACH 1960.00  
COMPASS BPA 4149353, 6

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

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(USD)  
Amount  
(USD)  
T221 - F+IWOODPILES  
33 NS0171024 CYLIND  
ER  
1240.00  
T234 - REINFCONCMATW/FRM  
34 NS0171034 CYLIND  
ER  
600.00  
T2CA - T2C WITH 3IN BIT  
35 NS0171050 CYLIND  
ER  
165.00  
T30 - TEMPORARY MACADAM  
36 NS0171123 CYLIND  
ER  
120.00  
T31 - BINDER BASE  
37 NS0171129 CYLIND  
ER  
325.00  
T32 - CONCRETE BASE  
38 NS0171145 CYLIND  
ER  
1400.00  
T400 - FURN,INSTALPAVNOEXCV  
39 NS0171157 CYLIND  
ER  
180.00  
T40A - EXCAONLYMACHINEHAND  
40 NS0171158 CYLIND  
ER  
180.00  
T40B - BKFILONLYMACHINEHAND  
41 NS0171179 CYLIND  
ER  
180.00  
T43 - EXCAMACHINEHAND<10FT  
42 NS0171183 CYLIND  
ER  
600.00  
T44 - EXCA100 HAND<10FT  
43 NS0171201 LINEAR  
FOOT  
138.00  
T46 - LINEARFT 3-0FTORLESS  
44 NS0171207 LINEAR  
FOOT  
148.50  
T46A - LF 3.0FTOR LESS LL14  
45 NS0171220 LINEAR  
FOOT  
8.50  
T46D - LFTCONDUIT>8DUCTS  
46 NS0171241 LINEAR  
FOOT  
130.00

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T47 - LINFT 3.1-5.0FT  
47 NS0171247 LINEAR  
FOOT  
130.00

T47A - LINFT 3.1-5.0FT LL14  
48 NS0171259 LINEAR  
FOOT  
400.00

T47L - LFTRENCH=>5FTDP  
49 NS0171265 LINEAR  
FOOT  
400.00

T47LA - LFTRENCH=>5FTDPPROT  
50 NS0171303 CYLIND  
ER  
350.00

T50 - ROCK  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount  
(USD)  
51 NS0171307 CYLIND  
ER  
900.00

T51 - ROCK REMOVAL-DISPOSE  
52 NS0171323 CYLIND  
ER  
200.00

T5R - LGHTREINCONRDBRKREST  
53 NS0171329 CYLIND  
ER  
800.00

T6R - HEAVYREINCONRDBRKRES  
54 NS0171344 CYLIND  
ER  
600.00

T7R - BRKRESTSDWKDRIV  
55 NS0171358 CYLIND  
ER  
25.00

T91 - CLEANFILL  
56 NS0171365 CYLIND  
ER  
25.00

T95 - TRUCKFROMSITE  
57 NS0171367 CYLIND  
ER  
3.00

T96 - CRUSHED STONE  
58 NS0171373 SQUARE  
FOOT  
40.00

T9R - FLAGBLUEZBLKBRKREST  
59 NS0171378 EACH 4500.00  
TFC1 - FCSTRUCT1SMALL  
60 NS0171379 EACH 40000.00  
TFC2 - FCSTRUCT2MEDIUM  
61 NS0171380 EACH 44000.00

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TFC3 - FCSTRUCT3LARGE  
62 NS0171395 EACH 800.00  
TPC1 - PCSTRUCT1SMALL  
63 NS0171396 EACH 32000.00  
TPC2 - PCSTRUCT2MEDIUM  
64 NS0171397 EACH 25000.00  
TPC3 - PCSTRUCT3LARGE  
65 NS0168403 SET 2200.00  
CP-3 - CABLEPULL500+4/0  
66 NS0168404 SET 2200.00  
CP-3A- 2SETS,SAMEDESCCP3  
67 NS0168408 SET 2200.00  
CP-4 - CABLEPULL500+4/0  
68 NS0168409 SET 2500.00  
CP-4A - 2SETS,SAMEDESCCP4  
69 NS0168417 SET 1200.00  
CP-7 - CABLEPULL<2/0  
70 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
71 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
72 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
73 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
74 NS0168393 EACH 1.00  
COMPASS BPA 4149353, 6  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
BILCORRECT - BILL CORRECTION  
75 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
76 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
77 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
78 NS0170598 EACH 1.00  
SUBINV - SUBCONTRACTINVOICE  
79 NS0209250 EACH 10.00  
T112A - StrapWldedPlts-15str  
80 NS0169527 CYLIND  
ER  
625.00  
GT-43A - EXCAVRDWYNONPROT  
81 NS0169531 CYLIND  
ER  
790.00  
GT-43PA - EXCAVRDWPTECTED  
82 NS0169357 LINEAR  
FOOT  
200.00  
GT-26A - UP TO 4IN  
83 NS0169377 LINEAR  
FOOT  
230.00  
GT-26PA - UP TO 4IN  
84 NS0169363 LINEAR



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FOOT  
290.00  
GT-26B - 6IN-8IN  
85 NS0169379 LINEAR  
FOOT  
300.00  
GT-26PB - 6IN-8IN  
86 NS0169369 LINEAR  
FOOT  
270.00  
GT-26C - 10IN-12IN  
87 NS0169381 LINEAR  
FOOT  
320.00  
GT-26PC - 10IN-12IN  
88 NS0169521 EACH 400.00  
GT-42A - OFFSET-UPTO4IN  
89 NS0169522 EACH 400.00  
GT-42B - OFFSET-6IN-8IN  
90 NS0169523 EACH 475.00  
GT-42C - OFFSET-10IN12IN  
91 NS0169250 LINEAR  
FOOT  
312.00  
GT-1AI1 - 1.25CTS-2IPS,<30FT  
92 NS0169253 LINEAR  
FOOT  
260.00  
GT-1AII1 - 1.25CTS-2IPS,>30FT  
93 NS0169262 LINEAR  
FOOT  
365.00  
GT-1BI1 - 3IPS-4IPS,<30FT  
94 NS0169265 LINEAR  
FOOT  
300.00  
GT-1BII1 - 3IPS-4IPS,>30FT  
95 NS0169274 LINEAR  
FOOT  
471.00  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
GT-1CI1 - 6IPS-8IPS,<30FT  
96 NS0169277 LINEAR  
FOOT  
400.00  
GT-1CII1 - 6IPS-8IPS,>30FT  
97 NS0169286 LINEAR  
FOOT  
664.00  
GT-1DI1 - 10IPS-12IPS,<30FT  
98 NS0169289 LINEAR  
FOOT  
664.00  
GT-1DII1 - 10IPS-12IPS,>30FT  
99 NS0169298 LINEAR

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FOOT  
500.00  
GT-1PAI1 - 1.25CTS-2IPS,<30FT  
100 NS0169301 LINEAR  
FOOT  
470.00  
GT-1PAI1 - 1.25CTS-2IPS,>30FT  
101 NS0169310 LINEAR  
FOOT  
600.00  
GT-1PBI1 - 3IPS-4IPS,<30FT  
102 NS0169313 LINEAR  
FOOT  
550.00  
GT-1PBII1 - 3IPS-4IPS,>30FT  
103 NS0169322 LINEAR  
FOOT  
600.00  
GT-1PCI1 - 6IPS-8IPS,<30FT  
104 NS0169325 LINEAR  
FOOT  
550.00  
GT-1PCII1 - 6IPS-8IPS,>30FT  
105 NS0169334 LINEAR  
FOOT  
600.00  
GT-1PDI1 - 10IPS-12IPS,<30FT  
106 NS0169337 LINEAR  
FOOT  
550.00  
GT-1PDII1 - 10IPS-12IPS,>30FT  
107 NS0169397 LINEAR  
FOOT  
333.00  
GT-2AI1 - 1CTS-2IPS,<30FT  
108 NS0169400 LINEAR  
FOOT  
300.00  
GT-2AII1 - 1CTS-2IPS,>30FT  
109 NS0169405 LINEAR  
FOOT  
370.00  
GT-2BI1 - 3IPS-4IPS,<30FT  
110 NS0169408 LINEAR  
FOOT  
350.00  
GT-2BII1 - 3IPS-4IPS,>30FT  
111 NS0168700 LINEAR  
FOOT  
365.00  
G-2CI1 - 6IPS<30HPPLASTMANH  
112 NS0168703 LINEAR  
FOOT  
335.00  
G-2CII1 - 6IPS>30HPPLASTMANH  
113 NS0169417 LINEAR  
FOOT  
500.00  
GT-2PAI1 - 1CTS-2IPS,<30FT

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

114 NS0169420 LINEAR

FOOT

475.00

GT-2PAH1 - 1CTS-2IPS,>30FT

115 NS0168721 LINEAR

FOOT

600.00

G-2PBI1 - 3IPS-4IPS,<30FT

116 NS0168724 LINEAR

FOOT

550.00

G-2PBII1 - 3IPS-4IPS,>30FT

117 NS0168733 LINEAR

FOOT

650.00

G-2PCI1 - 6IPS<30HPPLASTMANH

118 NS0168735 LINEAR

FOOT

600.00

G-2PCII1 - 6IPS>30HPPLASTMANH

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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## **Contains Confidential Commercial Information**

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 work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not Blanket Purchase Agreement 4149353,

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes

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to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4.Price and Payment.**

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A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B.Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C.For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but

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not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the

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representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Blanket Purchase Agreement 4149353,

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not

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limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

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A. Contractor warrants the Work for a period of three (3) years from the date of completion and Blanket Purchase Agreement 4149353,

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and

performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### 13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Blanket Purchase Agreement 4149353,

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time

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portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### (ii)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### (iii)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Blanket Purchase Agreement 4149353,

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14.Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Blanket Purchase Agreement 4149353,

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law

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(or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractors shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Blanket Purchase Agreement 4149353,

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.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 T&M or other cost reimbursable basis.

B.Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C.For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours

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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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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;

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(c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E.Contractors shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F.Contractors 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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17.Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its

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affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Blanket Purchase Agreement 4149353,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and



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received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H.If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20.Vehicle Spills. Contractor 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 Blanket Purchase Agreement 4149353,

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21.Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23.Inspection and Tests and Correction of Defects.

A.Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Blanket Purchase Agreement 4149353,

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire

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Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### 25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

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Attention: Purchasing Department  
Section Manager,  
Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Blanket Purchase Agreement 4149353,

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Blanket Purchase Agreement 4149353,

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise

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discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Blanket Purchase Agreement 4149353,

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the

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Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Blanket Purchase Agreement 4149353,

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior

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written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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

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made" determinant of coverage. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Blanket Purchase Agreement 4149353,

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Blanket Purchase Agreement 4149353,

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations

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hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or



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makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Blanket Purchase Agreement 4149353,

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

## **Contains Confidential Commercial Information**

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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. Blanket Purchase Agreement 4149353,

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a

## **Contains Confidential Commercial Information**

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. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1. Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time

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Con Edison has met its minimum purchase obligation as set forth below.

### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

### 5. Partial Deliveries

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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### 6. Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### 7. Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### 8. Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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## Appendix A

### APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS

## **Contains Confidential Commercial Information**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications Blanket Purchase Agreement 4149353,

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incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the

## **Contains Confidential Commercial Information**

contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the Blanket Purchase Agreement 4149353,

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal

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Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Signatures

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### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)



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ATTACHMENT NO. 7

CONTRACTOR: MECC CONTRACTING INC

PURCHASE ORDER NO.: 4149408

BID COMPARISON:

\$70,691,072

\$74,008,846

\$77,916,912

\$80,852,430

\$94,007,663

\$99,981,774

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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**

Order **4149408**

Revision **3**

PO Approved Date **05/30/2013**

Revision Date **05/30/2013**

Current Buyer **David Blaut**

Supplier: **MECC CONTRACTING INC**

**COMPASS 21 AUTUMN AVE**

**BROOKLYN, NY 11208**

**UNITED STATES**

Supplier

Contact:

**MOCCIA LUIGI**

**(718) 235-0800**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**8809 Immediate DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**05/15/2013 05/14/2016 66,900,000.00**

**Notes: MANHATTAN AREA WEST (ELECTRIC) TRENCHING CONTRACT**

**THIS IS A 3 YEAR CONTRACT.**

Pricing will remain firm for the term of the contract. There will be no escalation.

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The Scope of Work shall include but not limited to: The work will involve breaking, trucking and disposal of various thicknesses of roadway and sidewalk, all excavations, conduit/pipe/structure installation, backfilling, installing of base concrete, asphalt binder, cable pulling, and full flag sidewalk restoration per NYCDOT regulations.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER BLANKET PURCHASE AGREEMENT IS \$66,900,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT ORDER.

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This agreement will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison's invitation to RFQ# 74016 and all documents referenced therein.
- Con Edison's Clarifications/Addendum dated 1/24/13, 1/28/13 & 1/30/13.

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- Con Edison's Standard Terms and Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Con Edison's Electric Service Contract Work Scope Document & Special Conditions dated 1/7/13.
- Attachments B,C,D,E,F,G,H,J
- Con Edison's Trenching Manual - CONST-007 Revision Number 7 dated November 2009.
- Con Edison's Gas Trenching Manual approved 7/8/11 R0.
- MECC Contracting Inc. signed Offer, Exception, Disclosure, and Compliance Forms dated 1/28/13.
- MECC Contracting Inc. took no exceptions.

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Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection"). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Mike Perrino 212-460-3209 perrinom@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Mike Perrino 212-460-3209 perrinom@coned.com.

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REVISION 1 - DELETED FULL TOP ROADWAY FINAL RESTORATION LANGUAGE FROM THE CONTRACT TERMS. THIS SHOULD NOT BE INCLUDED IN THE WEST SIDE CONTRACT.  
REVISION 3 - INTERNAL CHANGE MADE TO BPA. NO CHANGES TO T&C'S OR AMOUNT AGREED.

Reference Documents: AMENDMENT 3.docx

Manhattan Historical Quantity Usage.xlsx

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Area Contract Bid questions.docx

AMENDMENT 2.docx

AMENDMENT 1.docx

Trenching Manual - Final Nov. 2009 R7.pdf

Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

6-10-08 R1.pdf

Gas Trenching Manual dated 7-8-11 R0.pdf

Copy of Attachment H.xlsx

Attachment J.doc

Attachment G.pdf

2013 Quantities or Area Contract 3 YEAR QTY.xlsx

Area Contract Special Conditions 1-7-2013.docx

PRE AWARD DOCS.pdf

Attachment C.xlsx

RFQ74016 - COMPLIANCE OFFER - MECC.pdf

Attachment F.xlsx

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Attachment D.xlsx  
2010 through 2012 Manhattan Stipulation Analysis.xlsx  
Attachment B.doc  
Attachment E.xls

EXHIBIT A TO DISCLOSURE FORM SIGNED BY MECC  
DATED 1.28.13.doc

All prices and amounts on this order are expressed in USD  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

1 NS0170601 SQUARE  
FOOT  
5.55  
T101 - SOLID SHEETING  
2 NS0170603 SQUARE  
FOOT  
19.50  
T103 - TONGUE/GROVESHEETING  
3 NS0170608 LINEAR  
FOOT  
9.50  
T11 - LL14CONCRETEBASE  
4 NS0170626 SQUARE  
FOOT  
3.50  
T120 - STEELPROTECTIONPLATE  
5 NS0170629 EACH 6475.00  
T122 - F/I/R SHUNT BOX  
6 NS0170630 LINEAR  
FOOT  
85.00  
T122A - LF SHUNT BOX > 50 FT  
7 NS0170632 EACH 1550.00  
T125 - TESTPIT 0.1-4.0 CY  
8 NS0170641 EACH 2550.00  
T126 - TESTPIT 4.1-8.0 CY  
9 NS0170651 EACH 3250.00  
T129TB - TEST BORING TO 30 FT  
10 NS0170609 SQUARE  
FOOT  
7.75  
T110 - VEHICULAR PLATES  
11 NS0170611 SQUARE  
FOOT  
18.75  
T112 - STRAPWELDEDPLATES  
12 NS0170614 SQUARE 7.50  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
T114 - PLATERENTALMAINT.  
13 NS0169656 SQUARE  
FOOT  
62.50  
GT-61 - T112W/RECESSPLTS

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14 NS0170732 LINEAR  
FOOT  
4.50  
T13RC - SAWCUT,REM,DESPASPH  
15 NS0170734 EACH 375.00  
T14 - COMPACTION TEST  
16 NS0170838 EACH 4650.00  
T156 - B/O,DISPBOX/CONDUITS  
17 NS0170844 EACH 21975.00  
T159 - BREAKEXISTMANHOLE  
18 NS0170847 CYLIND  
ER  
1977.00  
T159C - BRKOUTDISPEXISTVAULT  
19 NS0170861 LINEAR  
FOOT  
72.50  
T165 - SEWERCONNECTION<13-0  
20 NS0170863 EACH 7750.00  
T167 - INTERNALSEWERMATERIA  
21 NS0170919 LINEAR  
FOOT  
2.00  
T180 - INST 2"-5"CONDUIT  
22 NS0170927 CYLIND  
ER  
675.00  
T182 - FIBERGLASS CONDUIT  
23 NS0170951 CYLIND  
ER  
1150.00  
T190 - STRUCTURALCONC<5CY  
24 NS0170960 CYLIND  
ER  
305.00  
T2 - STREET/BASE/BRK  
25 NS0170961 EACH 6450.00  
T200 - LUMPSUMLAYOUTS  
26 NS0170962 EACH 7250.00  
T200A - T200 FOR PROTECTSTR  
27 NS0170973 EACH 4175.00  
T200TA - PENETTAVENTSHAFT  
28 NS0170975 HOUR 225.00  
T210 - DEWATERING  
29 NS0170979 EACH 750.00  
T211 - MOBILIZATION  
30 NS0170999 EACH 4750.00  
T215 - MOB WITHIN 4HRS  
31 NS0171008 EACH 45750.00  
T220 - MOB/DEMOBPILERIG  
32 NS0171009 EACH 3550.00  
T221 - F+IWOODPILES  
33 NS0171024 CYLIND  
ER  
1275.00  
T234 - REINFCONCMATW/FRM  
34 NS0171034 CYLIND  
ER  
675.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount  
(USD)

T2CA - T2C WITH 3IN BIT

35 NS0171050 CYLIND

ER

275.00

T30 - TEMPORARY MACADAM

36 NS0171123 CYLIND

ER

475.00

T31 - BINDER BASE

37 NS0171129 CYLIND

ER

255.25

T32 - CONCRETE BASE

38 NS0171157 CYLIND

ER

120.00

T40A - EXCAONLYMACHINEHAND

39 NS0171158 CYLIND

ER

85.00

T40B - BKFILONLYMACHINEHAND

40 NS0171179 CYLIND

ER

115.00

T43 - EXCAMACHINEHAND<10FT

41 NS0171183 CYLIND

ER

144.00

T44 - EXCA100 HAND<10FT

42 NS0171201 LINEAR

FOOT

130.15

T46 - LINEARFT 3-0FTORLESS

43 NS0171207 LINEAR

FOOT

150.15

T46A - LF 3.0FTOR LESS LL14

44 NS0171220 LINEAR

FOOT

9.50

T46D - LFTCONDUIT>8DUCTS

45 NS0171241 LINEAR

FOOT

140.95

T47 - LINFT 3.1-5.0FT

46 NS0171247 LINEAR

FOOT

160.95

T47A - LINFT 3.1-5.0FT LL14

47 NS0171259 LINEAR

FOOT

524.00

T47L - LFTRENCH=>5FTDP

48 NS0171265 LINEAR

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FOOT  
555.00  
T47LA - LFTRENCH=>5FTDPPROT  
49 NS0171303 CYLIND  
ER  
492.00  
T50 - ROCK  
50 NS0171307 CYLIND  
ER  
985.00  
T51 - ROCK REMOVAL-DISPOSE  
51 NS0171323 CYLIND  
ER  
975.00  
T5R - LGHTREINCONRDBRKREST  
52 NS0171329 CYLIND  
ER  
985.00  
T6R - HEAVYREINCONRDBRKRES  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
53 NS0171344 CYLIND  
ER  
771.25  
T7R - BRKRESTSDWKDRIV  
54 NS0171358 CYLIND  
ER  
21.25  
T91 - CLEANFILL  
55 NS0171365 CYLIND  
ER  
30.25  
T95 - TRUCKFROMSITE  
56 NS0171367 CYLIND  
ER  
110.00  
T96 - CRUSHED STONE  
57 NS0171373 SQUARE  
FOOT  
25.15  
T9R - FLAGBLUEZBLKBRKREST  
58 NS0171378 EACH 9570.00  
TFC1 - FCSTRUCT1SMALL  
59 NS0171379 EACH 27575.00  
TFC2 - FCSTRUCT2MEDIUM  
60 NS0171380 EACH 39155.00  
TFC3 - FCSTRUCT3LARGE  
61 NS0171395 EACH 8780.00  
TPC1 - PCSTRUCT1SMALL  
62 NS0171396 EACH 21415.00  
TPC2 - PCSTRUCT2MEDIUM  
63 NS0171397 EACH 37250.00  
TPC3 - PCSTRUCT3LARGE  
64 NS0168403 SET 1500.00  
CP-3 - CABLEPULL500+4/0  
65 NS0168404 SET 2250.00

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CP-3A- 2SETS,SAMEDESCCP3  
66 NS0168408 SET 2150.00  
CP-4 - CABLEPULL500+4/0  
67 NS0168409 SET 2575.00  
CP-4A - 2SETS,SAMEDESCCP4  
68 NS0168417 SET 1400.00  
CP-7 - CABLEPULL<2/0  
69 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
70 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
71 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
72 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
73 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
74 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
75 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
76 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
77 NS0170598 EACH 1.00  
SUBINV - SUBCONTRACTINVOICE  
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**Terms and Conditions  
Standard Terms**

**Standard Terms and Conditions for Construction Contracts  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
STANDARD TERMS AND CONDITIONS  
FOR**

**CONSTRUCTION CONTRACTS**  
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July 1, 2012

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## **Contains Confidential Commercial Information**

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 work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not Blanket Purchase Agreement 4149408,

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes

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to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4.Price and Payment.**

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A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B.Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C.For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but

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not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the

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representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Blanket Purchase Agreement 4149408,

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not

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limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

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A. Contractor warrants the Work for a period of three (3) years from the date of completion and Blanket Purchase Agreement 4149408,

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and

performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### 13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Blanket Purchase Agreement 4149408,

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time



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portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### (ii)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### (iii)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Blanket Purchase Agreement 4149408,

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14.Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Blanket Purchase Agreement 4149408,

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law

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(or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Blanket Purchase Agreement 4149408,

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours

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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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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;

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(c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E.Contractors shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F.Contractors 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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17.Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its

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affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Blanket Purchase Agreement 4149408,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and

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received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H.If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20.Vehicle Spills. Contractor 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

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21.Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23.Inspection and Tests and Correction of Defects.

A.Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire

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Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### 25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

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Attention: Purchasing Department  
Section Manager,  
Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Blanket Purchase Agreement 4149408,

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Blanket Purchase Agreement 4149408,

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise



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discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Blanket Purchase Agreement 4149408,

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the

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Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Blanket Purchase Agreement 4149408,

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior

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written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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

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made" determinant of coverage. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Blanket Purchase Agreement 4149408,

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Blanket Purchase Agreement 4149408,

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations

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hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or

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makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

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45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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.

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a



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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. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1. Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time

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Con Edison has met its minimum purchase obligation as set forth below.

### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

### 5. Partial Deliveries

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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### 6. Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### 7. Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### 8. Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

335692v.2

## Appendix A

### APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS

## **Contains Confidential Commercial Information**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications Blanket Purchase Agreement 4149408,

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incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the

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contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the Blanket Purchase Agreement 4149408,

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal

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Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### Signatures

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### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 8

CONTRACTOR: LEWIS TREE SERVICE INC

PURCHASE ORDER NO.: 4151586

BID COMPARISON:

\$19,574,178

\$21,433,817

\$31,916,045

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LBlanket Purchase Agreement 4151586, 0  
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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**

Order **4151586**

Revision **0**

PO Approved Date **06/05/2013**

Revision Date

Current Buyer **David Blaut**

Supplier: **LEWIS TREE SERVICE INC**

**225 BALLANTYNE RD**

**ROCHESTER, NY 14623**

**UNITED STATES**

Supplier

Contact:

**CATHERMAN PAMELA**

**(585) 295-2453**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**9139 Net 30**

Effective Start Date Effective End Date Amount Agreed (USD)

**06/01/2013 05/31/2016 18,500,000.00**

**Notes:** WESTCHESTER (YONKERS/RYE) TREE TRIMMING (VEGETATION MANAGEMENT)  
DISTRIBUTION

YEAR 1 - 6/1/13 - 5/31/14

YEAR 2 - 6/1/14 - 5/31/15

YEAR 3 - 6/1/15 - 5/31/16

Pricing will remain firm for the first year with escalation of 3.5% for the 2nd year and 6.84% for the 3rd year, respectively from year one pricing for unit pricing only

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Perform vegetation management by trimming and/or removing trees which may interfere with the overhead electric distribution systems for Consolidated Edison Company of New York, Inc. (CECONY) Westchester (Yonker And Rye).

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER THIS BLANKET PURCHASE AGREEMENT IS \$18,500,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND

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UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.

This agreement will be performed in accordance with the following which are incorporated herein by

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reference:

- Con Edison's invitation to RFQ# 36032 and all documents referenced therein.
- Con Edison's Clarifications/Addendum to bid event dated 10/10/12, 10/15/12, 10/24/12, 11/4/12.
- Con Edison's Standard Terms and Conditions of Service Contracts dated 7/1/12 as modified February 20, 2013 for Lewis Tree Service, Inc.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/07/08
- Tree Trimming Requirements For Overhead Electric Distribution Lines Specification EO-10353 revision 7 dated 9/11/12
- VM-02-09 – Distribution VM Maintenance Unit Descriptions
- Lewis Tree Service, Inc. signed Disclosure Form dated 11/16/12
- Con Edison always reserves the right to not release crews
- Contract will include a storm unit price to provide accessible funding for small storm emergency events defined as a duration three or less days estimated at under \$500,000. Large storm emergency events will continue to be funded under separate agreements at the time of the event.

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

6-10-08 R1.pdf

ACCEPTANCE TO T&C EMAIL.msg

Purchasing Disclosure Form.pdf

PRE AWARD DOCS.pdf

CLARIFICATION 1.docx

CLARIFICATION 4.docx

SPECS CECONY DISTRIBUTION.pdf

CLARIFICATION 2.docx

CLARIFICATION 3.docx

Con Edison 2010-2012 Distribution Unit Descriptions 9-22-09.doc

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 NS1931305 HOUR 59.93

SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 1

2 NS1931306 HOUR 85.15

SUPERVISOR - OVERTIME - PER HOUR - YEAR 1

3 NS1931307 HOUR 107.22

SUPERVISOR - PREMIUM TIME - PER HOUR - YEAR 1

4 NS1931308 HOUR 59.91

LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 1

5 NS1931309 HOUR 82.54

LEADER (FOREMAN) - OVERTIME - PER HOUR - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

6 NS1931310 HOUR 102.00

LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 1

7 NS1931311 HOUR 53.44

SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1

8 NS1931312 HOUR 73.20

SR.TRIMMER - OVERTIME - PER HOUR - YEAR 1

9 NS1931313 HOUR 88.70

SR.TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1

10 NS1931314 HOUR 47.87

JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1



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11 NS1931315 HOUR 65.10  
JR. TRIMMER - OVERTIME - PER HOUR - YEAR 1  
12 NS1931316 HOUR 78.85  
JR. TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1  
13 NS1931317 HOUR 41.27  
GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 1  
14 NS1931318 HOUR 57.84  
GROUND TRAINEE - OVERTIME - PER HOUR - YEAR 1  
15 NS1931319 HOUR 71.17  
GROUND TRAINEE - PREMIUM TIME - PER HOUR - YEAR 1  
16 NS1931323 HOUR 59.93  
GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 1  
17 NS1931324 HOUR 85.15  
GENERAL OPERATING SUPERVISION - OVERTIME - PER HOUR - YEAR 1  
18 NS1931325 HOUR 107.22  
GENERAL OPERATING SUPERVISION - PREMIUM TIME - PER HOUR - YEAR 1  
19 NS1931326 HOUR 107.78  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 1  
20 NS1931327 HOUR 140.38  
BOOMTRUCK OPERATOR & HELPER - OVERTIME - PER HOUR - YEAR 1  
21 NS1931328 HOUR 173.17  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME - PER HOUR - YEAR 1  
22 NS1931329 HOUR 53.44  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 1  
23 NS1931330 HOUR 65.10  
NOTIFICATION FORESTER - OVERTIME - PER HOUR - YEAR 1  
24 NS1931331 HOUR 78.85  
NOTIFICATION FORESTER - PREMIUM TIME - PER HOUR - YEAR 1  
25 NS1931332 HOUR 39.82  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 1  
26 NS1931333 HOUR 48.91  
FLAG PERSON - OVERTIME - PER HOUR - YEAR 1  
27 NS1931334 HOUR 60.87  
FLAG PERSON - PREMIUM TIME - PER HOUR - YEAR 1  
28 NS1931383 HOUR 24.11  
4WD BUCKET TRUCK - HOURLY - YEAR 1  
29 NS1931385 WEEK 964.40  
4WD BUCKET TRUCK - WEEKLY - YEAR 1  
30 NS1931390 HOUR 15.95  
50'-55' BUCKET TRUCK - HOURLY - YEAR 1  
31 NS1931391 WEEK 638.00  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 1  
32 NS1931395 HOUR 19.29  
55'-60' BUCKET TRUCK - HOURLY - YEAR 1  
33 NS1931396 WEEK 771.60  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 1  
34 NS1931399 HOUR 24.11  
60'-65' BUCKET TRUCK - HOURLY - YEAR 1  
35 NS1931400 WEEK 964.40  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 1  
36 NS1931403 HOUR 33.27  
65'-70' BUCKET TRUCK - HOURLY - YEAR 1  
37 NS1931405 WEEK 1330.80  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 1

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38 NS1931424 HOUR 5.34  
DISC CHIPPER - HOURLY - YEAR 1  
39 NS1931426 WEEK 213.60  
DISC CHIPPER - WEEKLY - YEAR 1  
40 NS1931427 HOUR 3.73  
DRUM CHIPPER - HOURLY - YEAR 1  
41 NS1931428 WEEK 149.20  
DRUM CHIPPER - WEEKLY - YEAR 1  
42 NS1931437 HOUR 10.65  
SPLIT DUMP - HOURLY - YEAR 1  
43 NS1931438 WEEK 426.00  
SPLIT DUMP - WEEKLY - YEAR 1  
44 NS1931451 HOUR 11.18  
PICK UP TRUCK - HOURLY - YEAR 1  
45 NS1931452 WEEK 426.00  
PICK UP TRUCK - WEEKLY - YEAR 1  
46 NS1931455 HOUR 40.80  
LOG TRUCK - HOURLY - YEAR 1  
47 NS1931457 WEEK 1632.00  
LOG TRUCK - WEEKLY - YEAR 1  
48 NS1931462 HOUR 81.41  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 1  
49 NS1931464 WEEK 3256.40  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 1  
50 NS1931467 HOUR 197.40  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 1  
51 NS1931468 WEEK 7896.00  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 1  
52 NS1931473 HOUR 60.35  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 2  
53 NS1931474 HOUR 86.10  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
54 NS1931475 HOUR 108.73  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
55 NS1931476 HOUR 62.25  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 2  
56 NS1931477 HOUR 85.68  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
57 NS1931478 HOUR 105.05  
LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 2  
58 NS1931479 HOUR 55.50  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
59 NS1931480 HOUR 75.40  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
60 NS1931481 HOUR 91.35  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
Blanket Purchase Agreement 4151586, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
61 NS1931482 HOUR 49.59  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
62 NS1931483 HOUR 67.05  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
63 NS1931484 HOUR 81.20  
JR. TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
64 NS1931485 HOUR 42.74  
GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 2

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65 NS1931486 HOUR 59.88  
GROUND TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
66 NS1931487 HOUR 73.77  
GROUND TRAINEE - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
67 NS1931491 HOUR 60.35  
GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 2  
68 NS1931492 HOUR 86.10  
GENERAL OPERATING SUPERVISION - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
69 NS1931493 HOUR 108.73  
GENERAL OPERATING SUPERVISION - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR  
2  
70 NS1931494 HOUR 112.11  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 2  
71 NS1931495 HOUR 145.56  
BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
72 NS1931496 HOUR 178.82  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
73 NS1931497 HOUR 55.30  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 2  
74 NS1931498 HOUR 67.05  
NOTIFICATION FORESTER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
75 NS1931499 HOUR 81.20  
NOTIFICATION FORESTER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
76 NS1931500 HOUR 41.23  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 2  
77 NS1931501 HOUR 50.72  
FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
78 NS1931502 HOUR 63.18  
FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
79 NS1931551 HOUR 24.47  
4WD BUCKET TRUCK - HOURLY - YEAR 2  
80 NS1931553 WEEK 978.80  
4WD BUCKET TRUCK - WEEKLY - YEAR 2  
81 NS1931558 HOUR 16.27  
50'-55' BUCKET TRUCK - HOURLY - YEAR 2  
82 NS1931559 WEEK 650.80  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 2  
83 NS1931563 HOUR 19.58  
55'-60' BUCKET TRUCK - HOURLY - YEAR 2  
84 NS1931564 WEEK 783.20  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 2  
85 NS1931567 HOUR 24.47  
60'-65' BUCKET TRUCK - HOURLY - YEAR 2  
86 NS1931568 WEEK 978.80  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 2  
87 NS1931571 HOUR 33.76  
65'-70' BUCKET TRUCK - HOURLY - YEAR 2  
Blanket Purchase Agreement 4151586, 0  
Proprietary and Confidential Page 6 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
88 NS1931573 WEEK 1350.40  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 2  
89 NS1931592 HOUR 5.42  
DISC CHIPPER - HOURLY - YEAR 2  
90 NS1931594 WEEK 216.80  
DISC CHIPPER - WEEKLY - YEAR 2  
91 NS1931595 HOUR 3.81

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DRUM CHIPPER - HOURLY - YEAR 2  
92 NS1931596 WEEK 152.40  
DRUM CHIPPER - WEEKLY - YEAR 2  
93 NS1931605 HOUR 10.81  
SPLIT DUMP - HOURLY - YEAR 2  
94 NS1931606 WEEK 432.40  
SPLIT DUMP - WEEKLY - YEAR 2  
95 NS1931619 HOUR 11.35  
PICK UP TRUCK - HOURLY - YEAR 2  
96 NS1931620 WEEK 454.00  
PICK UP TRUCK - WEEKLY - YEAR 2  
97 NS1931623 HOUR 41.41  
LOG TRUCK - HOURLY - YEAR 2  
98 NS1931625 WEEK 1656.40  
LOG TRUCK - WEEKLY - YEAR 2  
99 NS1931630 HOUR 83.03  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 2  
100 NS1931632 WEEK 3321.20  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 2  
101 NS1931635 HOUR 207.27  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 2  
102 NS1931636 WEEK 8290.80  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 2  
103 NS1931641 HOUR 62.62  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 3  
104 NS1931642 HOUR 88.96  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
105 NS1931643 HOUR 112.14  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
106 NS1931644 HOUR 64.52  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 3  
107 NS1931645 HOUR 88.70  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
108 NS1931646 HOUR 108.20  
LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 3  
109 NS1931647 HOUR 57.49  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
110 NS1931648 HOUR 77.69  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
111 NS1931649 HOUR 94.10  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
112 NS1931650 HOUR 51.24  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
113 NS1931651 HOUR 69.05  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
114 NS1931652 HOUR 83.65  
JR. TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
115 NS1931653 HOUR 44.13  
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(USD)  
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(USD)  
GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 3  
116 NS1931654 HOUR 61.78  
GROUND TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
117 NS1931655 HOUR 76.20  
GROUND TRAINEE - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
118 NS1931659 HOUR 62.62

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GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 3  
119 NS1931660 HOUR 88.96  
GENERAL OPERATING SUPERVISION - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
120 NS1931661 HOUR 112.14  
GENERAL OPERATING SUPERVISION - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR  
3  
121 NS1931662 HOUR 115.76  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 3  
122 NS1931663 HOUR 150.48  
BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
123 NS1931664 HOUR 184.40  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
124 NS1931665 HOUR 56.95  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 3  
125 NS1931666 HOUR 69.05  
NOTIFICATION FORESTER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
126 NS1931667 HOUR 83.65  
NOTIFICATION FORESTER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
127 NS1931668 HOUR 42.55  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 3  
128 NS1931669 HOUR 51.42  
FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
129 NS1931670 HOUR 64.34  
FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
130 NS1931719 HOUR 24.83  
4WD BUCKET TRUCK - HOURLY - YEAR 3  
131 NS1931721 WEEK 993.20  
4WD BUCKET TRUCK - WEEKLY - YEAR 3  
132 NS1931726 HOUR 16.59  
50'-55' BUCKET TRUCK - HOURLY - YEAR 3  
133 NS1931727 WEEK 663.60  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 3  
134 NS1931731 HOUR 19.87  
55'-60' BUCKET TRUCK - HOURLY - YEAR 3  
135 NS1931732 WEEK 794.80  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 3  
136 NS1931735 HOUR 24.83  
60'-65' BUCKET TRUCK - HOURLY - YEAR 3  
137 NS1931736 WEEK 993.20  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 3  
138 NS1931739 HOUR 34.26  
65'-70' BUCKET TRUCK - HOURLY - YEAR 3  
139 NS1931741 WEEK 1370.00  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 3  
140 NS1931760 HOUR 5.50  
DISC CHIPPER - HOURLY - YEAR 3  
141 NS1931762 WEEK 220.00  
DISC CHIPPER - WEEKLY - YEAR 3  
142 NS1931763 HOUR 3.90  
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DRUM CHIPPER - HOURLY - YEAR 3  
143 NS1931764 Daily 156.00  
DRUM CHIPPER - DAILY - YEAR 3  
144 NS1931774 HOUR 10.97  
SPLIT DUMP - HOURLY - YEAR 3

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145 NS1931775 WEEK 438.80  
SPLIT DUMP - WEEKLY - YEAR 3  
146 NS1931788 HOUR 11.52  
PICK UP TRUCK - HOURLY - YEAR 3  
147 NS1931789 WEEK 460.80  
PICK UP TRUCK - WEEKLY - YEAR 3  
148 NS1931792 HOUR 42.03  
LOG TRUCK - HOURLY - YEAR 3  
149 NS1931794 WEEK 1681.20  
LOG TRUCK - WEEKLY - YEAR 3  
150 NS1931799 HOUR 84.69  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 3  
151 NS1931801 WEEK 3387.60  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 3  
152 NS1931804 HOUR 220.00  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 3  
153 NS1931805 WEEK 8800.00  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 3  
154 NS1931815 MILE 5740.00  
DISTRIBUTION VM MAINTENANCE - 10X10X15 (CON ED WESTCHESTER RYE & YONKERS) -  
PER MILE - YEAR 1  
155 NS1931830 EACH 95.00  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
156 NS1931831 EACH 98.00  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
157 NS1931832 EACH 98.00  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
158 NS1931833 EACH 131.30  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
159 NS1931834 EACH 207.52  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
160 NS1931835 EACH 263.89  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
161 NS1931836 EACH 241.81  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
162 NS1931837 EACH 339.00  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
163 NS1931838 EACH 445.84  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
164 NS1931839 EACH 378.55  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
165 NS1931840 EACH 630.50  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
166 NS1931841 EACH 781.28  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
167 NS1931842 EACH 607.02  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
168 NS1931843 EACH 945.87  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
169 NS1931844 EACH 1200.00  
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REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
170 NS1931845 EACH 990.91  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
171 NS1931846 EACH 1602.00

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REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
172 NS1931847 EACH 1835.57  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
173 NS1931848 EACH 80.58  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
174 NS1931849 EACH 101.17  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
175 NS1931850 EACH 106.99  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
176 NS1931851 EACH 101.37  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
177 NS1931852 EACH 198.18  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
178 NS1931853 EACH 256.00  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
179 NS1931854 EACH 149.25  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
180 NS1931855 EACH 337.02  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
181 NS1931856 EACH 455.00  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
182 NS1931857 EACH 325.56  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
183 NS1931858 EACH 573.12  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
184 NS1931859 EACH 735.00  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
185 NS1931860 EACH 369.42  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
186 NS1931861 EACH 805.00  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
187 NS1931862 EACH 1011.40  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
188 NS1931863 EACH 691.23  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
189 NS1931864 EACH 1350.00  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
190 NS1931865 EACH 1697.00  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
191 NS1931866 EACH 75.00  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 1  
192 NS1931867 EACH 268.13  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 1  
193 NS1931868 EACH 339.00  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 1  
194 NS1931869 EACH 30.00  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 1  
195 NS1931870 EACH 49.45  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 1  
196 NS1931871 EACH 66.62  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 1  
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197 NS1931872 EACH 92.20  
CUT VINES AND TREAT - PER LOCATION - YEAR 1  
198 NS1931880 EACH 222.44

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GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 1  
199 NS1931881 EACH 331.78  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 1  
200 NS1931883 HOUR 132.52  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
201 NS1931886 HOUR 148.00  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
202 NS1931889 HOUR 171.69  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
203 NS1931892 HOUR 178.00  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
204 NS1931901 HOUR 148.58  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 1  
205 NS1931903 HOUR 260.00  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 1  
206 NS1931913 MILE 5940.90  
DISTRIBUTION VM MAINTENANCE - 10X10X15 (CON ED WESTCHESTER RYE & YONKERS) -  
PER MILE - YEAR 2  
207 NS1931928 EACH 98.33  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
208 NS1931929 EACH 101.43  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
209 NS1931930 EACH 101.43  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
210 NS1931931 EACH 135.90  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
211 NS1931932 EACH 214.78  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
212 NS1931933 EACH 273.13  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
213 NS1931934 EACH 250.27  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
214 NS1931935 EACH 350.87  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
215 NS1931936 EACH 461.44  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
216 NS1931937 EACH 391.80  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
217 NS1931938 EACH 652.57  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
218 NS1931939 EACH 808.62  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
219 NS1931940 EACH 628.27  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
220 NS1931941 EACH 978.98  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
221 NS1931942 EACH 1242.00  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
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222 NS1931943 EACH 1025.59  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2



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223 NS1931944 EACH 1658.07  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
224 NS1931945 EACH 1899.81  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
225 NS1931946 EACH 83.40  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
226 NS1931947 EACH 104.71  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
227 NS1931948 EACH 110.73  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
228 NS1931949 EACH 104.92  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
229 NS1931950 EACH 205.12  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
230 NS1931951 EACH 264.96  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
231 NS1931952 EACH 154.47  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
232 NS1931953 EACH 348.82  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
233 NS1931954 EACH 470.93  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
234 NS1931955 EACH 336.95  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
235 NS1931956 EACH 593.18  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
236 NS1931957 EACH 760.73  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
237 NS1931958 EACH 382.35  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
238 NS1931959 EACH 833.18  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
239 NS1931960 EACH 1046.80  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
240 NS1931961 EACH 715.42  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
241 NS1931962 EACH 1397.25  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
242 NS1931963 EACH 1756.40  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
243 NS1931964 EACH 77.63  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 2  
244 NS1931965 EACH 277.51  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 2  
245 NS1931966 EACH 350.87  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 2  
246 NS1931967 EACH 31.05  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 2  
247 NS1931968 EACH 51.18  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 2  
248 NS1931969 EACH 68.95  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 2  
249 NS1931970 EACH 95.43  
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CUT VINES AND TREAT - PER LOCATION - YEAR 2

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250 NS1931978 EACH 230.23  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 2  
251 NS1931979 EACH 343.39  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 2  
252 NS1931981 HOUR 137.16  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
253 NS1931984 HOUR 153.18  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
254 NS1931987 HOUR 177.70  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
255 NS1931990 HOUR 184.23  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
256 NS1931999 HOUR 153.78  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 2  
257 NS1932001 HOUR 269.10  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 2  
258 NS1932011 MILE 6132.62  
DISTRIBUTION VM MAINTENANCE - 10X10X15 (CON ED WESTCHESTER RYE & YONKERS) -  
PER MILE - YEAR 3  
259 NS1932026 EACH 101.50  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
260 NS1932027 EACH 104.70  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
261 NS1932028 EACH 104.70  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
262 NS1932029 EACH 140.28  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
263 NS1932030 EACH 221.71  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
264 NS1932031 EACH 281.94  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
265 NS1932032 EACH 26.51  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
266 NS1932033 EACH 362.19  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
267 NS1932034 EACH 476.34  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
268 NS1932035 EACH 404.44  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
269 NS1932036 EACH 673.63  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
270 NS1932037 EACH 834.72  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
271 NS1932038 EACH 648.54  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
272 NS1932039 EACH 1010.57  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
273 NS1932040 EACH 1282.08  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
274 NS1932041 EACH 1058.69

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REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
275 NS1932042 EACH 1710.58  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
276 NS1932043 EACH 1961.12  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
277 NS1932044 EACH 86.09  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
278 NS1932045 EACH 108.09  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
279 NS1932046 EACH 114.31  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
280 NS1932047 EACH 108.94  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
281 NS1932048 EACH 211.74  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
282 NS1932049 EACH 273.51  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
283 NS1932050 EACH 159.46  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
284 NS1932051 EACH 360.07  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
285 NS1932052 EACH 486.12  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
286 NS1932053 EACH 347.83  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
287 NS1932054 EACH 612.32  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
288 NS1932055 EACH 785.27  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
289 NS1932056 EACH 394.69  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
290 NS1932057 EACH 860.06  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
291 NS1932058 EACH 1080.58  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
292 NS1932059 EACH 738.51  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
293 NS1932060 EACH 1442.34  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
294 NS1932061 EACH 1813.07  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
295 NS1932062 EACH 80.13  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 3  
296 NS1932063 EACH 286.47  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 3  
297 NS1932064 EACH 362.19  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 3  
298 NS1932065 EACH 32.05  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 3  
299 NS1932066 EACH 52.83  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 3  
300 NS1932067 EACH 70.96  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 3  
301 NS1932068 EACH 98.51  
CUT VINES AND TREAT - PER LOCATION - YEAR 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

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Amount  
(USD)

- 302 NS1932076 EACH 237.65
- GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 3
- 303 NS1932077 EACH 354.47
- GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 3
- 304 NS1932079 HOUR 141.58
- 2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3
- 305 NS1932082 HOUR 158.12
- 2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3
- 306 NS1932085 HOUR 183.43
- 3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3
- 307 NS1932088 HOUR 190.18
- 3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3
- 308 NS1932097 HOUR 158.74
- 2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 3
- 309 NS1932099 HOUR 277.78
- 2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 3
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**Contract Terms and Conditions**

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**Terms and Conditions**

**TERMS**

**NEGOTIATED CON EDISON SERVICES TERMS AND CONDITIONS 2.20.13 LEWIS**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**SERVICE CONTRACTS**

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July 1, 2012

As modified February 20, 2013 for Lewis Tree Service, Inc.

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### Appendix A - Required Clauses and Certifications

#### **STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS**

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

"Con Edison"-Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for services to be performed for Con Edison or its affiliate, Orange and Rockland Utilities, Inc. ("O&R").

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

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"Contract"-The contract between Con Edison and the Contractor consisting of (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or the Con Edison Standard Purchase Order ("purchase order"), (b) the relevant Con Edison request for quotation, (c) these

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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 the Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if the Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of the Contractor's offer; provided, however, if the Contractor's offer contains terms additional to or different from those or 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 acknowledgement electronically by the Contractor of the Contract in the Procurement System or, if the Contractor is not enabled in the Procurement System, by the signing by the Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing the Contractor's acceptance thereof), or the Contractor's commencement or continuation of the services ordered under the Contract following its receipt of the Contract or such other writing, such performance signifying the Contractor's acceptance of the terms thereof.

3. **Amendments.** No revision or 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 the Contractor within thirty (30) days after receipt and processing of proper invoices with required supporting documentation.

B. Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department, after the rendering of the services for which payment is to be made, in such detail and with such supporting documentation as 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 reimbursable supplies and materials. If the Contract provides for services to be rendered on an hourly-rate basis, invoices shall include the number of hours worked and the hourly

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rate for each person performing services as well as the total amount invoiced, and shall be accompanied by signed time sheets and any other data or supporting documentation reasonably required by Con Edison.

C. Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in the progress of the services.

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

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

### **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 services furnished hereunder, and Con Edison agrees to pay or reimburse the Contractor 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 Contractor for any interest, penalties or expenses the Contractor may

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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 the Contractor shall cooperate and assist Con Edison therewith.

B. Payroll Taxes and Contributions. The Contractor assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of the state of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the services to be performed.

7. Time of Performance. The Contractor shall perform the services to be furnished in accordance with any schedule of performance stated herein. It is understood and agreed by the Contractor that **TIME IS OF THE ESSENCE OF THE CONTRACT** and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by Con Edison of revised schedules from the Contractor during the performance of the services shall not be deemed a waiver of the contract completion date.

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8. Excusable Delay. The Contractor 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 the Contractor, a strike not caused or prolonged by an unfair labor practice of the Contractor, public disorder or riot, a failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in the Contractor'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 the Contractor from another source. The Contractor 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 Contractor'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 the Contractor's performance hereunder at any time. The Contractor 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, the Contractor 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 the Contractor establishes to the satisfaction of Con Edison were incurred by the Contractor solely by reason of the suspension, provided, however, that such entitlement is conditioned upon the Contractor's notifying Con Edison in writing within fifteen (15) days of the suspension that additional costs will or may be incurred thereby and upon the Contractor'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 Contractor to receive any additional costs.

10. Warranties. The Contractor warrants that services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practice. The Contractor also warrants that services furnished hereunder shall meet any and all tests and conform strictly to all specifications and comply strictly with all performance requirements contained in the Contract. The Contractor further warrants any goods furnished hereunder in connection with such services to be new and free from defects in title, design, material, fabrication and workmanship, to conform strictly to any applicable samples and to specifications, drawings and other descriptions herein, and to be suitable for the purpose intended. Should any failure to meet any of the warranties stated herein appear within eighteen (18) months of the completion of all services rendered hereunder, the Contractor shall upon notice by Con Edison reperform the services and replace or repair any goods not conforming to the foregoing warranties promptly and without expense to Con Edison. In the event of failure of the Contractor promptly to remedy as aforesaid any breach of warranty Con Edison may correct the deficiencies and charge the Contractor the cost thereof. The aforesaid warranties shall survive acceptance of and payment for the services furnished hereunder. After any such services have been redone and materials or articles replaced or repaired pursuant to the foregoing warranties, they shall be subject anew to the foregoing warranties. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

11. Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any

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specifications, drawings or data incorporated herein. Any such changes shall be directed in writing (electronically or in print form). 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 Contractor for adjustment under this Article shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison, without prejudice to its right to 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 Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If the Contractor 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 the Contractor without recourse to Con Edison.

C. For time and material work, Contractor 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 Article 10 (Warranties) above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs, including, 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 the Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract work 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.

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B. For each claim for Non-Contract Work, as defined in A(i) of this Article, the Contractor must give written notice to Con Edison's designated representative within 5 days of when the Contractor 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, the Contractor must give written notice to Con Edison's designated representative within five (5) days of Contractor'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 Contractor 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 Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, the Contractor must begin submitting weekly



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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 in 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 the Contractor's bid for the performance of the work that had its cost Blanket Purchase Agreement 4151586,

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increased, the actual cost to the Contractor to perform such work, and the amount of the Increased Costs for which the Contractor claims Con Edison is responsible; 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. Contractor'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 Contractor that neither the Contractor 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 the Contractor 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 the Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the services hereunder are being performed and will be performed in full accordance with the requirement of the Contract and on schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to the premises at which services hereunder are being performed 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 services rendered 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 a deficiency in the Contractor's performance or that it was not in accordance with the Contract requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by Con Edison or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish goods and services fully in accordance with the requirements of the Contract. Any articles or equipment serviced or repaired hereunder shall be subject to inspection and testing by Con Edison after completion of the services (and after delivery to Con Edison, if it has been removed from Con Edison's premises), and final payment for repaired articles or equipment shall not be due before acceptance of the articles or equipment after testing. Payment prior to testing shall not constitute acceptance.

15. Personnel.

A. Personnel assigned to perform services hereunder who are specifically designated personnel in the Contract shall devote substantially all their working time to performing work under the Contract, unless there is an express provision to the contrary in the Contract, and shall not be removed from such assignments without the prior written consent of Con Edison. Con Edison shall have the right to approve replacements for such designated personnel. Contractor shall remove any personnel from performing services under the Contract as may be requested by Con Edison.

B. The Contractor and its permitted subcontractors shall not employ any Con Edison or O&R employee to perform any services hereunder without the prior written permission of Con Edison. Further, neither Contractor nor any of its subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the Blanket Purchase Agreement 4151586,

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subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order."

16.Subcontracting.

A.The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval. Nothing contained herein shall create any contractual rights in any subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the services furnished hereunder to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, and comply with the other requirements relating to insurance as are required of the Contractor hereunder, including, but not limited to, the requirements relating to naming Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Subcontracts shall provide for the Contractor the same rights against the subcontractor as Con Edison and O&R have hereunder against the Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Attention:Purchasing Department  
Section Manager,  
Technology and Strategic Initiatives  
Blanket Purchase Agreement 4151586,

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17.Assignment. The Contractor 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, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract.

18.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 the Contractor or its subcontractors in connection with the Contract shall, except to the extent indicated in writing by Con Edison (or O&R with respect to services ordered for O&R), 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 upon completion of such performance. The Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding its services 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. The Contractor acknowledges that its violation of the provisions of this Article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, the

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Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this Article, in addition to their remedies at law.

19. Infringement. If the Contractor, 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 Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use under the Contract by securing a suitable agreement from the owner of such right. The Contractor 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 out of or related to a claim against an Indemnified Party that the services rendered hereunder, or any goods, designs, processes or works of authorship (including computer programs and documentation) supplied in connection therewith or resulting therefrom, infringe any patent, copyright, trademark or any other proprietary right. The Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded against an Indemnified Party. Con Edison shall notify the Contractor of any such claim, suit or proceeding in writing and give the Contractor authority, information and assistance (at the Contractor's expense) for the defense thereof. In the event that the use of any goods, designs, processes or works of authorship furnished hereunder is enjoined, the Contractor shall promptly, at its own expense, either (a) procure for Con Edison (or O&R, with respect to services performed for O&R) the right to continue using such goods, designs, processes or works of authorship or (b) with the approval of Con Edison, (i) replace them with noninfringing goods, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

20. Indemnification. To the fullest extent allowed by law, the Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns 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 the Contractor or any subcontractor, or any of their agents, servants, representatives or employees, or non-parties to the Contract under Blanket Purchase Agreement 4151586,

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

21. Insurance. The Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract), at its own expense, 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 any part of the services involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Contractor shall be for not less than \$7,500,000 per occurrence for bodily injury or death or property damage or a combined single limit of not less than \$7,500,000 per occurrence.) There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or

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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 services furnished hereunder and completed operations. There shall be no exclusion for claims by Contractor's employees against Con Edison or O&R based on injury to Contractor's or any subcontractor's employees.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Contractor or any Subcontractors, with a combined single limit of not less than \$1,000,000 per Blanket Purchase Agreement 4151586,

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accident for bodily injury or death and property damage.

D. Where the work involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by the Contractor or any subcontractors, 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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Contractor shall require the subcontractor to name Contractor, 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 services include any architectural, 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 services to be furnished under the Contract.

The Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days' prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 work at Con Edison's premises the Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above 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 services and completed operations. Con Edison shall have the right, upon request, to require the Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor, 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 the Contractor's contractual obligations hereunder.

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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)

22. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by written notice to the Contractor terminate the Contract, in whole or in part, without liability to the Contractor except

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as stated in this Article. In the event of such termination, in full discharge of its obligations to the Contractor in respect of the Contract and such termination, Con Edison shall pay the Contractor for services performed 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 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 the Contractor of any obligation which may arise out of services performed prior to termination. In no event shall Con Edison be liable to the Contractor for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales.

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

24.Ownership of Documents and Materials; Ownership of Intangible Property.

A.With respect to all documents and materials, including, but not limited to, drawings, plans, Blanket Purchase Agreement 4151586,

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

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

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to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Blanket Purchase Agreement 4151586,

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Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

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

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

26. Compliance with Laws. The Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder. The Contractor shall provide Con Edison, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article. Without limiting the generality of the foregoing, the Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which are 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 contractors to the federal government.

27. Set-Off. Con Edison shall have the right to set off against any sums due the Contractor under the Contract any claims Con Edison may have against the Contractor under the Contract or any other contract between Con Edison

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and the Contractor without prejudice to the rights of the parties in respect of such claims.

28. Investigation and Audit. Contractor 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 services furnished under the Contract, and the Contractor 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 22 (Termination for Convenience) of these Standard Terms and Conditions, the Contractor 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 respective authorized representatives during the term of the Contract and for a period of six (6) years after final payment under the Contract. If an investigation, audit, or inquiry discloses that Con Edison has paid the Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, or for any other costs that were improperly charged, the Contractor shall refund to Con Edison an amount equal to such payment.

29. Required Approvals

A. The Contractor will not be permitted to perform any field service work, including but not limited to installation, maintenance, and repair, until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

B. Where required by the Contract, the Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. 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 their implementation.

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

31. Effect of Con Edison Approval. The Contractor's obligations under the Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve the Contractor's work hereunder, including, but not limited to, 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 Contractor 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 the Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance, and shall not release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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32. Safeguards. The Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Contractor 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 the Contractor shall have been tested and meet all applicable ANSI standards and legal requirements, shall be of high quality and in good working order. The Contractor 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 the Contractor's work practices or conditions created by the Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. The Contractor 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 the site, a Con Edison employee (or an O&R employee where services were ordered for O&R) directs the Contractor to discontinue an operation because it may be unsafe or illegal, the Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. The Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's

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authorized representative.

33. Maintenance of Work Site. The Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the performance of the services or the work of any other 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, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the services suspended until the condition is corrected and all costs associated therewith shall be borne by the Contractor.

34. Vehicle Spills. Contractor 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. 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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

35. Protection of Persons and Property; Notice of Accidents

A. When the Contractor performs services hereunder, the Contractor shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. The Contractor

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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. The Contractor shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Con Edison's premises, 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. The Contractor 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, the Contractor 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 the Contractor 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 the Contractor.

D. When the Contractor or any permitted subcontractor performs services hereunder, its employees and consultants are required to have available a Contractor (or a subcontractor) or government-issued name and photo identification for review by Con Edison.

36. Communication with Supervisors. When work is performed outside of the Contractor's own premises, the Contractor must provide at all times an on-site representative with full authority to act for the Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for the Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, the Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by the Contractor in this role shall be subject to the continuing approval of Con Edison.

37. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in



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these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that the Contractor's offer is referred to in the Blanket Purchase Agreement 4151586,

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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.

38. Waiver. Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of the Contractor's duties or obligations nor any failure of Con Edison to insist on strict performance by the Contractor of this Contract or to assert Con Edison's rights in any one or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of a breach hereof, shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

39. Relationship of Parties. The Contractor shall be an independent contractor in the performance of the services hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the parties, or joint employers of the Contractor's employees.

40. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and the Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

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

43. Title and Risk of Loss (Repair Services). If the Contract is, in whole or in part, for repair, maintenance or modification of equipment, the additional provisions in this Article 43 shall apply. Con Edison will retain title to equipment to be repaired or modified by the Contractor. Title to parts installed by the Contractor in Con Edison equipment, whether or not on Con Edison's premises, will pass to Con Edison upon installation. The risk of loss of or damage to the Con Edison equipment shall be borne by the Contractor from the time such equipment is turned over to the Contractor by Con Edison or, if it is to be delivered to the Contractor by others, from the time it is turned over to a carrier for shipment to the Contractor. The risk of loss or damage shall remain with the Contractor at all times thereafter until the equipment is returned and accepted by Con Edison at its premises if it has been removed or, if the services are being performed on Con Edison's premises, until the work has been completed, the Contractor Blanket Purchase Agreement 4151586,

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so notifies Con Edison in writing and the equipment restored to Con Edison's care, custody and control.

44. Material Safety Data Sheets. The Contractor shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be contained in the goods to be furnished or used in the performance of services hereunder. For this purpose, a toxic substance is any that is listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete and return an MSDS promptly when requested to do so by Con Edison shall be grounds for cancellation of the Contract for default.

45. Submission to Jurisdiction/Choice of Forum

A. The Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. The Contractor agrees that service of process on the Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or

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certified mail addressed to the Contractor at the address shown in the Contract or at the address of any office actually maintained by the Contractor, or by actual personal delivery to the Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. The Contractor consents to the selection of the state and the federal courts situated in the City of New York or in Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

46. 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 16, 19, 20, 21, 28, 35, 46 and 49 are third party beneficiaries of the Contract and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

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

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

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

## **Contains Confidential Commercial Information**

(including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1.Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Blanket Purchase Agreement 4151586,

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Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Con Edison has met its minimum purchase obligation as set forth below.

##### **2.Maximum and Minimum Quantities**

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### **3.Orders for Goods or Services**

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

##### **4.Terms and Conditions**

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

##### **5.Partial Deliveries**

Blanket Purchase Agreement 4151586,

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The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

##### **6.Shipping Notices**

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

##### **7.Expenditure Limitation**

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches

## Contains Confidential Commercial Information

seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### 8.Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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### Appendix A

#### APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

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As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### ANTIKICKBACK PROCEDURES

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not

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result in any liability of Con Edison to the Contractor.

#### UTILIZATION OF SMALL BUSINESS CONCERNS

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns

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(MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Blanket Purchase Agreement 4151586,

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Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such

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certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

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(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to Blanket Purchase Agreement 4151586,

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the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### **Signatures**

#### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 9

CONTRACTOR: TREES INC

PURCHASE ORDER NO.: 4151683

BID COMPARISON:

\$17,469,902

\$24,904,282

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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**  
Order **4151683**  
Revision **0**

PO Approved Date **05/31/2013**  
Revision Date

Current Buyer **David Blaut**  
Supplier: **TREES INC**  
**650 N SAM HOUSTON PRKWY E**  
**HOUSTON, TX 77060**  
**UNITED STATES**

Supplier  
Contact:  
**VAN CURA WILLIAM**  
**(860) 449-2148**

Key  
ConEd  
Contact:  
**David Blaut**  
Ship To: **4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Bill To: **PO Box 799**  
**Cooper Station**  
**New York, NY 10276-0799**  
**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**12933 Net 30**

Effective Start Date Effective End Date Amount Agreed (USD)

**06/01/2013 05/31/2016 15,500,000.00**

**Notes:** WESTCHESTER (EASTVIEW/BUCHANAN) TREE TRIMMING (VEGETATION MANAGEMENT)  
DISTRIBUTION

YEAR 1 - 6/1/13 - 5/31/14

YEAR 2 - 6/1/14 - 5/31/15

YEAR 3 - 6/1/15 - 5/31/16

Pricing will remain firm for the first year with escalation of 2.0% for the 2nd year and 4.0% for the 3rd year, respectively from year one pricing for unit pricing only

-----  
Perform vegetation management by trimming and/or removing trees which may interfere with the overhead electric distribution systems for Consolidated Edison Company of New York, Inc. (CECONY) Westchester (Eastview & Buchanan).

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER THIS BLANKET PURCHASE AGREEMENT IS \$15,500,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND

Blanket Purchase Agreement 4151683, 0  
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UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.



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This agreement will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison's invitation to RFQ# 36032 and all documents referenced therein.
- Con Edison's Clarifications/Addendum to bid event dated 10/10/12, 10/15/12, 10/24/12, 11/4/12.
- Con Edison's Standard Terms and Conditions of Service Contracts dated 7/1/12 as modified February 20, 2013 for Trees, Inc.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Tree Trimming Requirements For Overhead Electric Distribution Lines Specification EO-10353 revision 7 dated 9/11/12
- VM-02-09 – Distribution VM Maintenance Unit Descriptions
- Trees Inc. signed Disclosure Form dated 2/21/13
- Con Edison always reserves the right to not release crews
- Contract will include a storm unit price to provide accessible funding for small storm emergency events defined as a duration three or less days estimated at under \$500,000. Large storm emergency events will continue to be funded under separate agreements at the time of the event.

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Reference Documents: CLARIFICATION 4.docx

CLARIFICATION 3.docx

CLARIFICATION 2.docx

CLARIFICATION 1.docx

Trees Inc Disclosure & Subcontractor Form.pdf

PRE AWARDS DOCS.pdf

CE-WESTCHESTER E&B.xlsx

SPECS CECONY DISTRIBUTION.pdf

Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

6-10-08 R1.pdf

Con Edison 2010-2012 Distribution Unit Descriptions 9-22-09.doc

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS1931305 HOUR 56.23

SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 1

2 NS1931306 HOUR 74.65

SUPERVISOR - OVERTIME - PER HOUR - YEAR 1

3 NS1931307 HOUR 99.00

SUPERVISOR - PREMIUM TIME - PER HOUR - YEAR 1

4 NS1931308 HOUR 61.08

LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 1

5 NS1931309 HOUR 78.72

LEADER (FOREMAN) - OVERTIME - PER HOUR - YEAR 1

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

6 NS1931310 HOUR 100.74

LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 1

7 NS1931311 HOUR 54.60

SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1

8 NS1931312 HOUR 69.73

SR.TRIMMER - OVERTIME - PER HOUR - YEAR 1

9 NS1931313 HOUR 87.78

SR.TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1

10 NS1931314 HOUR 49.83

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JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1  
11 NS1931315 HOUR 63.13  
JR. TRIMMER - OVERTIME - PER HOUR - YEAR 1  
12 NS1931316 HOUR 78.86  
JR. TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1  
13 NS1931317 HOUR 41.70  
GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 1  
14 NS1931318 HOUR 50.21  
GROUND TRAINEE - OVERTIME - PER HOUR - YEAR 1  
15 NS1931319 HOUR 60.83  
GROUND TRAINEE - PREMIUM TIME - PER HOUR - YEAR 1  
16 NS1931323 HOUR 56.23  
GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 1  
17 NS1931324 HOUR 74.65  
GENERAL OPERATING SUPERVISION - OVERTIME - PER HOUR - YEAR 1  
18 NS1931325 HOUR 99.00  
GENERAL OPERATING SUPERVISION - PREMIUM TIME - PER HOUR - YEAR 1  
19 NS1931326 HOUR 102.12  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 1  
20 NS1931327 HOUR 129.65  
BOOMTRUCK OPERATOR & HELPER - OVERTIME - PER HOUR - YEAR 1  
21 NS1931328 HOUR 168.43  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME - PER HOUR - YEAR 1  
22 NS1931329 HOUR 44.47  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 1  
23 NS1931330 HOUR 55.68  
NOTIFICATION FORESTER - OVERTIME - PER HOUR - YEAR 1  
24 NS1931331 HOUR 72.00  
NOTIFICATION FORESTER - PREMIUM TIME - PER HOUR - YEAR 1  
25 NS1931332 HOUR 41.04  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 1  
26 NS1931333 HOUR 49.43  
FLAG PERSON - OVERTIME - PER HOUR - YEAR 1  
27 NS1931334 HOUR 59.72  
FLAG PERSON - PREMIUM TIME - PER HOUR - YEAR 1  
28 NS1931383 HOUR 21.60  
4WD BUCKET TRUCK - HOURLY - YEAR 1  
29 NS1931385 WEEK 864.00  
4WD BUCKET TRUCK - WEEKLY - YEAR 1  
30 NS1931390 HOUR 16.05  
50'-55' BUCKET TRUCK - HOURLY - YEAR 1  
31 NS1931391 WEEK 642.00  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 1  
32 NS1931395 HOUR 18.76  
55'-60' BUCKET TRUCK - HOURLY - YEAR 1  
33 NS1931396 WEEK 750.20  
Blanket Purchase Agreement 4151683, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 1  
34 NS1931399 HOUR 24.16  
60'-65' BUCKET TRUCK - HOURLY - YEAR 1  
35 NS1931400 WEEK 966.40  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 1  
36 NS1931403 HOUR 24.95  
65'-70' BUCKET TRUCK - HOURLY - YEAR 1  
37 NS1931405 WEEK 998.00

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65'-70' BUCKET TRUCK - WEEKLY - YEAR 1  
38 NS1931424 HOUR 5.11  
DISC CHIPPER - HOURLY - YEAR 1  
39 NS1931426 WEEK 204.40  
DISC CHIPPER - WEEKLY - YEAR 1  
40 NS1931427 HOUR 2.79  
DRUM CHIPPER - HOURLY - YEAR 1  
41 NS1931428 WEEK 111.60  
DRUM CHIPPER - WEEKLY - YEAR 1  
42 NS1931437 HOUR 11.44  
SPLIT DUMP - HOURLY - YEAR 1  
43 NS1931438 WEEK 457.60  
SPLIT DUMP - WEEKLY - YEAR 1  
44 NS1931451 HOUR 11.91  
PICK UP TRUCK - HOURLY - YEAR 1  
45 NS1931452 WEEK 476.40  
PICK UP TRUCK - WEEKLY - YEAR 1  
46 NS1931455 HOUR 34.06  
LOG TRUCK - HOURLY - YEAR 1  
47 NS1931457 WEEK 1362.40  
LOG TRUCK - WEEKLY - YEAR 1  
48 NS1931462 HOUR 72.34  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 1  
49 NS1931464 WEEK 2893.60  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 1  
50 NS1931467 HOUR 173.31  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 1  
51 NS1931468 WEEK 6932.40  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 1  
52 NS1931473 HOUR 58.34  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 2  
53 NS1931474 HOUR 77.45  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
54 NS1931475 HOUR 102.71  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
55 NS1931476 HOUR 63.37  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 2  
56 NS1931477 HOUR 81.67  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
57 NS1931478 HOUR 101.56  
LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 2  
58 NS1931479 HOUR 56.65  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
59 NS1931480 HOUR 72.34  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
60 NS1931481 HOUR 91.07  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
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(USD)  
61 NS1931482 HOUR 51.07  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
62 NS1931483 HOUR 65.50  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
63 NS1931484 HOUR 81.22  
JR. TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
64 NS1931485 HOUR 43.26

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GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 2

65 NS1931486 HOUR 51.72

GROUND TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

66 NS1931487 HOUR 62.64

GROUND TRAINEE - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

67 NS1931491 HOUR 58.34

GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 2

68 NS1931492 HOUR 77.45

GENERAL OPERATING SUPERVISION - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

69 NS1931493 HOUR 102.71

GENERAL OPERATING SUPERVISION - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR

2

70 NS1931494 HOUR 105.95

BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 2

71 NS1931495 HOUR 134.51

BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

72 NS1931496 HOUR 174.75

BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

73 NS1931497 HOUR 46.14

NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 2

74 NS1931498 HOUR 57.77

NOTIFICATION FORESTER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

75 NS1931499 HOUR 74.70

NOTIFICATION FORESTER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

76 NS1931500 HOUR 42.58

FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 2

77 NS1931501 HOUR 51.28

FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

78 NS1931502 HOUR 61.96

FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

79 NS1931551 HOUR 21.82

4WD BUCKET TRUCK - HOURLY - YEAR 2

80 NS1931553 WEEK 872.64

4WD BUCKET TRUCK - WEEKLY - YEAR 2

81 NS1931558 HOUR 16.21

50'-55' BUCKET TRUCK - HOURLY - YEAR 2

82 NS1931559 WEEK 648.42

50'-55' BUCKET TRUCK - WEEKLY - YEAR 2

83 NS1931563 HOUR 18.94

55'-60' BUCKET TRUCK - HOURLY - YEAR 2

84 NS1931564 WEEK 757.70

55'-60' BUCKET TRUCK - WEEKLY - YEAR 2

85 NS1931567 HOUR 24.40

60'-65' BUCKET TRUCK - HOURLY - YEAR 2

86 NS1931568 WEEK 976.06

60'-65' BUCKET TRUCK - WEEKLY - YEAR 2

87 NS1931571 HOUR 25.20

65'-70' BUCKET TRUCK - HOURLY - YEAR 2

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88 NS1931573 WEEK 1007.98

65'-70' BUCKET TRUCK - WEEKLY - YEAR 2

89 NS1931592 HOUR 5.16

DISC CHIPPER - HOURLY - YEAR 2

90 NS1931594 WEEK 206.44

DISC CHIPPER - WEEKLY - YEAR 2

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91 NS1931595 HOUR 2.82  
DRUM CHIPPER - HOURLY - YEAR 2  
92 NS1931596 WEEK 112.72  
DRUM CHIPPER - WEEKLY - YEAR 2  
93 NS1931605 HOUR 11.55  
SPLIT DUMP - HOURLY - YEAR 2  
94 NS1931606 WEEK 462.18  
SPLIT DUMP - WEEKLY - YEAR 2  
95 NS1931619 HOUR 12.03  
PICK UP TRUCK - HOURLY - YEAR 2  
96 NS1931620 WEEK 481.16  
PICK UP TRUCK - WEEKLY - YEAR 2  
97 NS1931623 HOUR 34.40  
LOG TRUCK - HOURLY - YEAR 2  
98 NS1931625 WEEK 1376.02  
LOG TRUCK - WEEKLY - YEAR 2  
99 NS1931630 HOUR 73.06  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 2  
100 NS1931632 WEEK 2922.54  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 2  
101 NS1931635 HOUR 175.04  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 2  
102 NS1931636 WEEK 7001.72  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 2  
103 NS1931641 HOUR 59.80  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 3  
104 NS1931642 HOUR 79.39  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
105 NS1931643 HOUR 105.28  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
106 NS1931644 HOUR 64.95  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 3  
107 NS1931645 HOUR 83.71  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
108 NS1931646 HOUR 102.14  
LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 3  
109 NS1931647 HOUR 58.06  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
110 NS1931648 HOUR 74.15  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
111 NS1931649 HOUR 93.35  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
112 NS1931650 HOUR 52.99  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
113 NS1931651 HOUR 67.13  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
114 NS1931652 HOUR 83.65  
JR. TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
115 NS1931653 HOUR 44.28  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
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GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 3  
116 NS1931654 HOUR 53.01  
GROUND TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
117 NS1931655 HOUR 64.54  
GROUND TRAINEE - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3

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118 NS1931659 HOUR 59.80  
GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 3  
119 NS1931660 HOUR 79.39  
GENERAL OPERATING SUPERVISION - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
120 NS1931661 HOUR 105.28  
GENERAL OPERATING SUPERVISION - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR  
3  
121 NS1931662 HOUR 108.60  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 3  
122 NS1931663 HOUR 137.87  
BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
123 NS1931664 HOUR 179.11  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
124 NS1931665 HOUR 47.29  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 3  
125 NS1931666 HOUR 59.21  
NOTIFICATION FORESTER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
126 NS1931667 HOUR 76.57  
NOTIFICATION FORESTER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
127 NS1931668 HOUR 43.64  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 3  
128 NS1931669 HOUR 52.57  
FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
129 NS1931670 HOUR 63.51  
FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
130 NS1931719 HOUR 22.03  
4WD BUCKET TRUCK - HOURLY - YEAR 3  
131 NS1931721 WEEK 881.37  
4WD BUCKET TRUCK - WEEKLY - YEAR 3  
132 NS1931726 HOUR 16.37  
50'-55' BUCKET TRUCK - HOURLY - YEAR 3  
133 NS1931727 WEEK 654.90  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 3  
134 NS1931731 HOUR 19.13  
55'-60' BUCKET TRUCK - HOURLY - YEAR 3  
135 NS1931732 WEEK 765.28  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 3  
136 NS1931735 HOUR 24.65  
60'-65' BUCKET TRUCK - HOURLY - YEAR 3  
137 NS1931736 WEEK 985.82  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 3  
138 NS1931739 HOUR 25.45  
65'-70' BUCKET TRUCK - HOURLY - YEAR 3  
139 NS1931741 WEEK 1018.06  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 3  
140 NS1931763 HOUR 5.21  
DRUM CHIPPER - HOURLY - YEAR 3  
141 NS1931765 WEEK 208.51  
DRUM CHIPPER - WEEKLY - YEAR 3  
142 NS1931766 HOUR 2.85  
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DISC CHIPPER 18" OR GREATER - HOURLY - YEAR 3  
143 NS1931767 WEEK 113.84  
DISC CHIPPER 18" OR GREATER - WEEKLY - YEAR 3  
144 NS1931774 HOUR 11.67

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SPLIT DUMP - HOURLY - YEAR 3  
145 NS1931775 WEEK 466.80  
SPLIT DUMP - WEEKLY - YEAR 3  
146 NS1931788 HOUR 12.15  
PICK UP TRUCK - HOURLY - YEAR 3  
147 NS1931789 WEEK 485.98  
PICK UP TRUCK - WEEKLY - YEAR 3  
148 NS1931792 HOUR 34.74  
LOG TRUCK - HOURLY - YEAR 3  
149 NS1931794 WEEK 1389.78  
LOG TRUCK - WEEKLY - YEAR 3  
150 NS1931799 HOUR 73.79  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 3  
151 NS1931801 WEEK 2951.76  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 3  
152 NS1931804 HOUR 176.79  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 3  
153 NS1931805 WEEK 7071.74  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 3  
154 NS1931814 MILE 6910.00  
DISTRIBUTION VM MAINTENANCE - 10X10X15 (CON ED WESTCHESTER EASTVIEW &  
BUCHANAN) - PER MILE - YEAR 1  
155 NS1931830 EACH 91.17  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
156 NS1931831 EACH 97.12  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
157 NS1931832 EACH 103.06  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
158 NS1931833 EACH 160.92  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
159 NS1931834 EACH 195.23  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
160 NS1931835 EACH 246.76  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
161 NS1931836 EACH 260.89  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
162 NS1931837 EACH 331.99  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
163 NS1931838 EACH 378.56  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
164 NS1931839 EACH 527.94  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
165 NS1931840 EACH 613.69  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
166 NS1931841 EACH 769.02  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
167 NS1931842 EACH 925.89  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
168 NS1931843 EACH 879.17  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
169 NS1931844 EACH 954.63  
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REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
170 NS1931845 EACH 1372.54  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1

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171 NS1931846 EACH 1568.87  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
172 NS1931847 EACH 1685.66  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
173 NS1931848 EACH 86.22  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
174 NS1931849 EACH 92.16  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
175 NS1931850 EACH 97.12  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
176 NS1931851 EACH 147.58  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
177 NS1931852 EACH 170.02  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
178 NS1931853 EACH 233.88  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
179 NS1931854 EACH 247.72  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
180 NS1931855 EACH 289.12  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
181 NS1931856 EACH 359.73  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
182 NS1931857 EACH 501.58  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
183 NS1931858 EACH 563.07  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
184 NS1931859 EACH 730.37  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
185 NS1931860 EACH 806.40  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
186 NS1931861 EACH 876.67  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
187 NS1931862 EACH 1012.82  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
188 NS1931863 EACH 1327.31  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
189 NS1931864 EACH 1344.88  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
190 NS1931865 EACH 1630.20  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
191 NS1931866 EACH 60.45  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 1  
192 NS1931867 EACH 250.72  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 1  
193 NS1931868 EACH 331.99  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 1  
194 NS1931869 EACH 16.94  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 1  
195 NS1931870 EACH 27.20  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 1  
196 NS1931871 EACH 38.94  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 1  
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197 NS1931872 EACH 72.57  
CUT VINES AND TREAT - PER LOCATION - YEAR 1



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198 NS1931880 EACH 184.62  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 1  
199 NS1931881 EACH 216.73  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 1  
200 NS1931883 HOUR 135.48  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
201 NS1931886 HOUR 138.11  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
202 NS1931889 HOUR 177.57  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
203 NS1931892 HOUR 180.20  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
204 NS1931901 HOUR 136.18  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 1  
205 NS1931903 HOUR 201.66  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 1  
206 NS1931912 MILE 7048.20  
DISTRIBUTION VM MAINTENANCE - 10X10X15 (CON ED WESTCHESTER EASTVIEW &  
BUCHANAN) - PER MILE - YEAR 2  
207 NS1931928 EACH 92.99  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
208 NS1931929 EACH 99.06  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
209 NS1931930 EACH 105.12  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
210 NS1931931 EACH 164.14  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
211 NS1931932 EACH 199.13  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
212 NS1931933 EACH 251.70  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
213 NS1931934 EACH 266.11  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
214 NS1931935 EACH 338.63  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
215 NS1931936 EACH 386.13  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
216 NS1931937 EACH 538.50  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
217 NS1931938 EACH 625.96  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
218 NS1931939 EACH 784.40  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
219 NS1931940 EACH 944.41  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
220 NS1931941 EACH 896.75  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
221 NS1931942 EACH 973.72  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
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222 NS1931943 EACH 1399.99

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REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
223 NS1931944 EACH 1600.25  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
224 NS1931945 EACH 1719.37  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
225 NS1931946 EACH 87.94  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
226 NS1931947 EACH 94.00  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
227 NS1931948 EACH 99.06  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
228 NS1931949 EACH 150.53  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
229 NS1931950 EACH 173.42  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
230 NS1931951 EACH 238.56  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
231 NS1931952 EACH 252.67  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
232 NS1931953 EACH 294.90  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
233 NS1931954 EACH 366.92  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
234 NS1931955 EACH 511.61  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
235 NS1931956 EACH 574.33  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
236 NS1931957 EACH 744.98  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
237 NS1931958 EACH 822.53  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
238 NS1931959 EACH 894.20  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
239 NS1931960 EACH 1033.08  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
240 NS1931961 EACH 1353.86  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
241 NS1931962 EACH 1371.78  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
242 NS1931963 EACH 1662.80  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
243 NS1931964 EACH 61.66  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 2  
244 NS1931965 EACH 255.73  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 2  
245 NS1931966 EACH 338.63  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 2  
246 NS1931967 EACH 17.28  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 2  
247 NS1931968 EACH 27.74  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 2  
248 NS1931969 EACH 39.72  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 2  
249 NS1931970 EACH 74.02

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

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CUT VINES AND TREAT - PER LOCATION - YEAR 2  
250 NS1931978 EACH 188.31  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 2  
251 NS1931979 EACH 221.06  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 2  
252 NS1931981 HOUR 138.19  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
253 NS1931984 HOUR 140.87  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
254 NS1931987 HOUR 181.12  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
255 NS1931990 HOUR 183.80  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
256 NS1931999 HOUR 138.90  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 2  
257 NS1932001 HOUR 205.69  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 2  
258 NS1932010 MILE 7186.40  
DISTRIBUTION VM MAINTENANCE - 10X10X15 (CON ED WESTCHESTER EASTVIEW &  
BUCHANAN) - PER MILE - YEAR 3  
259 NS1932026 EACH 94.82  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
260 NS1932027 EACH 101.00  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
261 NS1932028 EACH 107.18  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
262 NS1932029 EACH 167.36  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
263 NS1932030 EACH 203.04  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
264 NS1932031 EACH 256.63  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
265 NS1932032 EACH 271.33  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
266 NS1932033 EACH 345.27  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
267 NS1932034 EACH 393.70  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
268 NS1932035 EACH 549.06  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
269 NS1932036 EACH 638.24  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
270 NS1932037 EACH 799.78  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
271 NS1932038 EACH 962.93  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
272 NS1932039 EACH 914.34  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
273 NS1932040 EACH 992.82  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
274 NS1932041 EACH 1427.44

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REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
275 NS1932042 EACH 1631.62  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
276 NS1932043 EACH 1753.09  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
277 NS1932044 EACH 89.67  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
278 NS1932045 EACH 95.85  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
279 NS1932046 EACH 101.00  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
280 NS1932047 EACH 153.48  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
281 NS1932048 EACH 176.82  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
282 NS1932049 EACH 243.24  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
283 NS1932050 EACH 257.63  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
284 NS1932051 EACH 300.68  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
285 NS1932052 EACH 374.12  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
286 NS1932053 EACH 521.64  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
287 NS1932054 EACH 585.59  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
288 NS1932055 EACH 759.58  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
289 NS1932056 EACH 838.66  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
290 NS1932057 EACH 911.74  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
291 NS1932058 EACH 1053.33  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
292 NS1932059 EACH 1380.40  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
293 NS1932060 EACH 1398.68  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
294 NS1932061 EACH 1695.41  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
295 NS1932062 EACH 62.87  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 3  
296 NS1932063 EACH 260.75  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 3  
297 NS1932064 EACH 345.27  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 3  
298 NS1932065 EACH 17.62  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 3  
299 NS1932066 EACH 28.29  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 3  
300 NS1932067 EACH 40.50  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 3  
301 NS1932068 EACH 75.47  
CUT VINES AND TREAT - PER LOCATION - YEAR 3  
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Amount  
(USD)

302 NS1932076 EACH 192.00  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 3  
303 NS1932077 EACH 225.40  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 3  
304 NS1932079 HOUR 140.90  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3  
305 NS1932082 HOUR 143.63  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3  
306 NS1932085 HOUR 184.67  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3  
307 NS1932088 HOUR 187.41  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3  
308 NS1932097 HOUR 141.63  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 3  
309 NS1932099 HOUR 209.73  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 3

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**STANDARD TERMS AND CONDITIONS SERVICES 2.20.13**  
**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**STANDARD TERMS AND CONDITIONS**  
**FOR**  
**SERVICE CONTRACTS**

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July 1, 2012

As modified February 20, 2013 for Trees, Inc.  
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### Appendix A - Required Clauses and Certifications

#### **STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS**

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

"Con Edison"-Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for services to be performed for Con Edison or its affiliate, Orange and Rockland Utilities, Inc. ("O&R").

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

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"Contract"-The contract between Con Edison and the Contractor consisting of (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or the Con Edison Standard Purchase Order ("purchase order")

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), (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 the Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if the Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of the Contractor's offer; provided, however, if the Contractor's offer contains terms additional to or different from those or 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 acknowledgement electronically by the Contractor of the Contract in the Procurement System or, if the Contractor is not enabled in the Procurement System, by the signing by the Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing the Contractor's acceptance thereof), or the Contractor's commencement or continuation of the services ordered under the Contract following its receipt of the Contract or such other writing, such performance signifying the Contractor's acceptance of the terms thereof.

3.Amendments. No revision or 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 the Contractor within thirty (30) days after receipt and processing of proper invoices with required supporting documentation.

B.Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department, after the rendering of the services for which payment is to be made, in such detail and with such supporting documentation as 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 reimbursable supplies and materials. If the Contract provides for 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 Blanket Purchase Agreement 4151683,

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accompanied by signed time sheets and any other data or supporting documentation reasonably required by Con Edison.

C.Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in the progress of the services.

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

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

### 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 services furnished hereunder, and Con Edison agrees to pay or reimburse the Contractor 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

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shall reimburse the Contractor for any interest, penalties or expenses the Contractor 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 the Contractor shall cooperate and assist Con Edison therewith.

B. Payroll Taxes and Contributions. The Contractor assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of the state of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the services to be performed.

7. Time of Performance. The Contractor shall perform the services to be furnished in accordance with any schedule of performance stated herein. It is understood and agreed by the Contractor that **TIME IS OF THE ESSENCE OF THE CONTRACT** and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by Con Edison of revised schedules from the Contractor during the performance of the services shall not be deemed a waiver of the contract completion date.

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8. Excusable Delay. The Contractor 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 the Contractor, a strike not caused or prolonged by an unfair labor practice of the Contractor, public disorder or riot, a failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in the Contractor'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 the Contractor from another source. The Contractor 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 Contractor'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 the Contractor's performance hereunder at any time. The Contractor 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, the Contractor 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 the Contractor establishes to the satisfaction of Con Edison were incurred by the Contractor solely by reason of the suspension, provided, however, that such entitlement is conditioned upon the Contractor's notifying Con Edison in writing within fifteen (15) days of the suspension that additional costs will or may be incurred thereby and upon the Contractor'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 Contractor to receive any additional costs.

10. Warranties. The Contractor warrants that services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practice. The Contractor also warrants that services furnished hereunder shall meet any and all tests and conform strictly to all specifications and comply strictly with all performance requirements contained in the Contract. The Contractor further warrants any goods furnished hereunder in connection with such services to be new and free from defects in title, design, material, fabrication and workmanship, to conform strictly to any applicable samples and to specifications, drawings and other descriptions herein, and to be suitable for the purpose intended. Should any failure to meet any of the warranties stated herein appear within eighteen (18) months of the completion of all services rendered hereunder, the Contractor shall upon notice by Con Edison reperform the services and replace or repair any goods not conforming to the foregoing warranties promptly and without expense to Con Edison. In the event of failure of the Contractor promptly to remedy as aforesaid any breach of warranty Con Edison may correct the deficiencies and charge the Contractor the cost thereof. The aforesaid warranties shall survive acceptance of and payment for the services furnished hereunder. After any such services have been redone and materials or articles replaced or repaired pursuant to the foregoing warranties, they shall be subject anew to the foregoing warranties. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.



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11.Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any Blanket Purchase Agreement 4151683,

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specifications, drawings or data incorporated herein. Any such changes shall be directed in writing (electronically or in print form). 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 Contractor for adjustment under this Article shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison, without prejudice to its right to 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 Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If the Contractor 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 the Contractor without recourse to Con Edison.

C.For time and material work, Contractor 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 Article 10 (Warranties) above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs, including, 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 the Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract work 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.

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B.For each claim for Non-Contract Work, as defined in A(i) of this Article, the Contractor must give written notice to Con Edison's designated representative within 5 days of when the Contractor 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, the Contractor must give written notice to Con Edison's designated representative within five (5) days of Contractor'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 Contractor 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 Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor 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

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notice required by paragraph B of this Article, the Contractor 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 in 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 the Contractor's bid for the performance of the work that had its cost Blanket Purchase Agreement 4151683,

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increased, the actual cost to the Contractor to perform such work, and the amount of the Increased Costs for which the Contractor claims Con Edison is responsible; 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. Contractor'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 Contractor that neither the Contractor 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 the Contractor 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 the Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the services hereunder are being performed and will be performed in full accordance with the requirement of the Contract and on schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to the premises at which services hereunder are being performed 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 services rendered 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 a deficiency in the Contractor's performance or that it was not in accordance with the Contract requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by Con Edison or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish goods and services fully in accordance with the requirements of the Contract. Any articles or equipment serviced or repaired hereunder shall be subject to inspection and testing by Con Edison after completion of the services (and after delivery to Con Edison, if it has been removed from Con Edison's premises), and final payment for repaired articles or equipment shall not be due before acceptance of the articles or equipment after testing. Payment prior to testing shall not constitute acceptance.

15. Personnel.

A. Personnel assigned to perform services hereunder who are specifically designated personnel in the Contract shall devote substantially all their working time to performing work under the Contract, unless there is an express provision to the contrary in the Contract, and shall not be removed from such assignments without the prior written consent of Con Edison. Con Edison shall have the right to approve replacements for such designated personnel. Contractor shall remove any personnel from performing services under the Contract as may be requested by Con Edison.

B. The Contractor and its permitted subcontractors shall not employ any Con Edison or O&R employee to perform any services hereunder without the prior written permission of Con Edison. Further, neither Contractor nor any of its subcontractors shall utilize or otherwise permit any former employee of Con Edison Blanket Purchase Agreement 4151683,

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Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order."

16.Subcontracting.

A.The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval. Nothing contained herein shall create any contractual rights in any subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the services furnished hereunder to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, and comply with the other requirements relating to insurance as are required of the Contractor hereunder, including, but not limited to, the requirements relating to naming Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Subcontracts shall provide for the Contractor the same rights against the subcontractor as Con Edison and O&R have hereunder against the Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, NY 10003

Attention:Purchasing Department

Section Manager,

Technology and Strategic Initiatives

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17.Assignment. The Contractor 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, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract.

18.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 the Contractor or its subcontractors in connection with the Contract shall, except to the extent indicated in writing by Con Edison (or O&R with respect to services ordered for O&R), 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 upon completion of such performance. The Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding its services 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. The Contractor acknowledges that its violation of the provisions of this Article may result in irreparable harm to Con Edison and O&R, the amount of which would be

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difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, the Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this Article, in addition to their remedies at law.

19. Infringement. If the Contractor, 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 Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use under the Contract by securing a suitable agreement from the owner of such right. The Contractor 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 out of or related to a claim against an Indemnified Party that the services rendered hereunder, or any goods, designs, processes or works of authorship (including computer programs and documentation) supplied in connection therewith or resulting therefrom, infringe any patent, copyright, trademark or any other proprietary right. The Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded against an Indemnified Party. Con Edison shall notify the Contractor of any such claim, suit or proceeding in writing and give the Contractor authority, information and assistance (at the Contractor's expense) for the defense thereof. In the event that the use of any goods, designs, processes or works of authorship furnished hereunder is enjoined, the Contractor shall promptly, at its own expense, either (a) procure for Con Edison (or O&R, with respect to services performed for O&R) the right to continue using such goods, designs, processes or works of authorship or (b) with the approval of Con Edison, (i) replace them with noninfringing goods, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

20. Indemnification. To the fullest extent allowed by law, the Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns 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 the Contractor or any Blanket Purchase Agreement 4151683,

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subcontractor, or any of their agents, servants, representatives or employees, or non-parties to the Contract under their direction or control. The Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against the Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against the Contractor.

21. Insurance. The Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract), at its own expense, 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 any part of the services involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Contractor shall be for not less than \$7,500,000 per occurrence for bodily injury or death or property damage or a combined single limit of not less than \$7,500,000 per occurrence.) There shall be no policy deductibles without Con Edison's prior written approval.

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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 services furnished hereunder and completed operations. There shall be no exclusion for claims by Contractor's employees against Con Edison or O&R based on injury to Contractor's or any subcontractor's employees.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Blanket Purchase Agreement 4151683,

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Contractor 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 the work involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by the Contractor or any subcontractors, 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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Contractor shall require the subcontractor to name Contractor, 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 services include any architectural, 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 services to be furnished under the Contract.

The Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days' prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 work at Con Edison's premises the Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above 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 services and completed operations. Con Edison shall have the right, upon request, to require the Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor, Con Edison or O&R arising out of the performance of the work, except to the extent the injury is caused by the negligence of Con Edison or O&R and notwithstanding any statutory prohibition or limitation of the Contractor's contractual Blanket Purchase Agreement 4151683,

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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)

22. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by

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written notice to the Contractor terminate the Contract, in whole or in part, without liability to the Contractor except as stated in this Article. In the event of such termination, in full discharge of its obligations to the Contractor in respect of the Contract and such termination, Con Edison shall pay the Contractor for services performed 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 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 the Contractor of any obligation which may arise out of services performed prior to termination. In no event shall Con Edison be liable to the Contractor for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales.

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

24. Ownership of Documents and Materials; Ownership of Intangible Property.

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

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

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of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such Blanket Purchase Agreement 4151683,

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assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

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

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

26. Compliance with Laws. The Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder. The Contractor shall provide Con Edison, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article. Without limiting the generality of the foregoing, the Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which are 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 contractors to the federal government.

27. Set-Off. Con Edison shall have the right to set off against any sums due the Contractor under the Contract any

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claims Con Edison may have against the Contractor under the Contract or any other contract between Con Edison and the Contractor without prejudice to the rights of the parties in respect of such claims.

28. Investigation and Audit. Contractor 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 services furnished under the Contract, and the Contractor 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 22 (Termination for Convenience) of these Standard Terms and Conditions, the Contractor 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 respective authorized representatives during the term of the Contract and for a period of six (6) years after final payment under the Contract. If an investigation, audit, or inquiry discloses that Con Edison has paid the Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, or for any other costs that were improperly charged, the Contractor shall refund to Con Edison an amount equal to such payment.

29. Required Approvals

A. The Contractor will not be permitted to perform any field service work, including but not limited to installation, maintenance, and repair, until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

B. Where required by the Contract, the Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. 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 their implementation.

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

31. Effect of Con Edison Approval. The Contractor's obligations under the Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve the Contractor's work hereunder, including, but not limited to, 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 Contractor 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 the Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance, and shall not release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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32. Safeguards. The Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Contractor 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 the Contractor shall have been tested and meet all applicable ANSI standards and legal requirements, shall be of high quality and in good working order. The Contractor 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 the Contractor's work practices or conditions created by the Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. The Contractor 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 the site, a Con Edison employee (or an O&R employee where services were ordered for O&R) directs the Contractor to discontinue an operation because it may be unsafe or illegal, the Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. The Contractor shall



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obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

33. Maintenance of Work Site. The Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the performance of the services or the work of any other 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, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the services suspended until the condition is corrected and all costs associated therewith shall be borne by the Contractor.

34. Vehicle Spills. Contractor 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. 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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

35. Protection of Persons and Property; Notice of Accidents  
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A. When the Contractor performs services hereunder, the Contractor shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. The Contractor 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. The Contractor shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Con Edison's premises, 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. The Contractor 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, the Contractor 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 the Contractor 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 the Contractor.

D. When the Contractor or any permitted subcontractor performs services hereunder, its employees and consultants are required to have available a Contractor (or a subcontractor) or government-issued name and photo identification for review by Con Edison.

36. Communication with Supervisors. When work is performed outside of the Contractor's own premises, the Contractor must provide at all times an on-site representative with full authority to act for the Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for the Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, the Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by the Contractor in this role shall be subject to the continuing approval of Con Edison.

37. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions

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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 Blanket Purchase Agreement 4151683,

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inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that the Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

38. Waiver. Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of the Contractor's duties or obligations nor any failure of Con Edison to insist on strict performance by the Contractor of this Contract or to assert Con Edison's rights in any one or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of a breach hereof, shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

39. Relationship of Parties. The Contractor shall be an independent contractor in the performance of the services hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the parties, or joint employers of the Contractor's employees.

40. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and the Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

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

43. Title and Risk of Loss (Repair Services). If the Contract is, in whole or in part, for repair, maintenance or modification of equipment, the additional provisions in this Article 43 shall apply. Con Edison will retain title to equipment to be repaired or modified by the Contractor. Title to parts installed by the Contractor in Con Edison equipment, whether or not on Con Edison's premises, will pass to Con Edison upon installation. The risk of loss of or damage to the Con Edison equipment shall be borne by the Contractor from the time such equipment is turned over to the Contractor by Con Edison or, if it is to be delivered to the Contractor by others, from the time it is turned over to a carrier for shipment to the Contractor. The risk of loss or damage shall remain with the Contractor at all Blanket Purchase Agreement 4151683,

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times thereafter until the equipment is returned and accepted by Con Edison at its premises if it has been removed or, if the services are being performed on Con Edison's premises, until the work has been completed, the Contractor so notifies Con Edison in writing and the equipment restored to Con Edison's care, custody and control.

44. Material Safety Data Sheets. The Contractor shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be contained in the goods to be furnished or used in the performance of services hereunder. For this purpose, a toxic substance is any that is listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete and return an MSDS promptly when requested to do so by Con Edison shall be grounds for cancellation of the Contract for default.

45. Submission to Jurisdiction/Choice of Forum

A. The Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. The Contractor agrees that service of process on the Contractor in

## Contains Confidential Commercial Information

relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to the Contractor at the address shown in the Contract or at the address of any office actually maintained by the Contractor, or by actual personal delivery to the Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. The Contractor consents to the selection of the state and the federal courts situated in the City of New York or in Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

46. 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 16, 19, 20, 21, 28, 35, 46 and 49 are third party beneficiaries of the Contract and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

47. Service Organization Control SSAE 16 SOC 1 Report. If Contractor performs services for Con Edison pursuant to the Contract that Con Edison determines have an impact on the financial reporting controls of Con Edison or fall within the purview of Con Edison's Sarbanes-Oxley compliance efforts, then: (i) Contractor shall provide Con Edison with a copy of the latest SSAE 16 SOC 1 ("SOC 1") Report concerning Contractor's operations, systems, controls and procedures prior to commencing performance under the Contract; and (ii) during the term of the Contract, Contractor shall be obligated to have a new SOC 1 performed and to furnish a new SOC 1 Report concerning such new audit to Con Edison no later than twelve (12) months after the date of the SOC 1 Report that was previously furnished to Con Edison. Contractor will provide Con Edison with a bridge letter covering any period of time between the date of the last SOC 1 Report furnished to Con Edison and termination of the Contract. All SOC 1 Reports shall reference the applicable Con Edison Contract purchase order number and shall be sent to: Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, NY 10003, Attention: Auditing Blanket Purchase Agreement 4151683,

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Department.

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

49. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other purchase orders and contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other purchase order or contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contract between Con Edison and Contractor (including, but not limited to, the right to payments for services performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such purchase orders or contracts, and in law and

## **Contains Confidential Commercial Information**

equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1.Nature of These Special Conditions**

Blanket Purchase Agreement 4151683,

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These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Con Edison has met its minimum purchase obligation as set forth below.

##### **2.Maximum and Minimum Quantities**

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### **3.Orders for Goods or Services**

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

##### **4.Terms and Conditions**

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

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##### **5.Partial Deliveries**

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

##### **6.Shipping Notices**

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

##### **7.Expenditure Limitation**

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform

## **Contains Confidential Commercial Information**

Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### **8.Completion of Performance**

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

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The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

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The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment

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of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

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### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, Blanket Purchase Agreement 4151683,

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O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### **Signatures**

#### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 10

CONTRACTOR: GIANFIA CORP

PURCHASE ORDER NO.: 4152855

BID COMPARISON:

\$ 3,696,150  
\$ 4,483,395  
\$ 4,948,200  
\$ 5,232,181  
\$ 5,231,075  
\$ 5,748,850  
\$ 5,774,067  
\$ 5,821,706  
\$ 7,129,259  
\$ 7,629,947  
\$10,964,681  
\$11,006,360



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COMPASS BPA 4152855, 3

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4152855**

Revision **3**

PO Approved Date **07/08/2013**

Revision Date **07/08/2013**

Current Buyer **David Blaut**

Supplier: **GIANFIA CORP**

**COMPASS 179 BRADY AVE**

**HAWTHRONE, NY 10532**

**UNITED STATES**

Supplier

Contact:

**RUGGIERO RALPH**

**(914) 358-4601**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10806 Immediate N/A**

Effective Start Date Effective End Date Amount Agreed (USD)

**06/01/2013 05/31/2015 3,471,670.00**

**Notes:** Per Oracle RFQ 97248, Gianfia Corp. shall provide supervision, labor, tools and equipment to excavate, and subsequently restore, test pits and other relatively small excavations as needed at Company Substations throughout the five boroughs of New York City and Westchester County for a two year period commencing in June 1, 2013.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$3,471,670. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Contract Funding: \$3,471,670

Escalation Factor for Year 2: 1.019

Contract Term: June 1, 2013 – May 31, 2015

This purchase order will be performed in accordance with & incorporates by reference the following:

- Oracle RFQ 97248, and all documents referenced therein.
- Special Conditions dated 3/28/2013 Included in the RFQ 97248.
- Specifications CE-SS-3400 Part 2200, CE-SS-3400-2513, EO-8085 Rev 7 and Ex-1181 Rev 6,

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included in the Special Conditions.

- Construction Management Trenching Manual Excavation and Installation, Revision 7 dated November 2009

- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/2012.

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- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008
- Special Conditions of Purchase - Indefinite Quantity Contract dated July 1, 2012
- Con Edison EH&S Requirements
- Contractor's submitted Compliance & Exception, Offer & Disclosure Forms dated 4/12/2013 (No Exceptions)

No contractor can perform any work before a hasp is approved by EH&S.

REVISION 1 - CHANGED BUYER FROM L. PRESOTTO TO D. BLAUT. NO ADDITIONAL CHANGES MADE TO CONTRACT.

REVISION 2 - CANCELLED LINE 54 - DUPLICATE OF LINE 53. NO OTHER CHANGES MADE TO BPA.

Reference Documents: Gianfia Test Pits & Trenching Contract Compliance Forms.pdf

Exhibit A.pdf

Supplemental Construction Contract Requirements (SCCR).pdf

Test Pit and Trenching Special Conditions Rev 4 20130430.doc

Trenching Manual - Revision 7.doc

EO-8085 Rev 7.pdf

EO-1181 Rev 6.pdf

CE-SS-3400-2513.pdf

CE-SS-3400 PART 2200.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

2 NS0171033 CYLIND

ER

200.00

T2C - B/OREMPAVMT

3 NS0201925 CUBIC

YARD

350.00

T12B - FurnInstAsphBinder

4 NS0201926 CUBIC

YARD

350.00

T12C - FurnInstAspTopCourse

5 NS0171135 LINEAR

FOOT

10.00

T33 - SAWCUT CONCRETE

6 NS0171139 LINEAR

FOOT

6.00

T35 - SAWCUT ASPHALT

7 NS0171157 CYLIND

ER

50.00

T40A - EXCAONLYMACHINEHAND

8 NS0171158 CYLIND

ER

35.00

T40B - BKFILONLYMACHINEHAND

9 NS0201929 CUBIC

YARD

280.00

T40C - ExcBkfilT5FT

10 NS0201930 CUBIC

YARD

360.00

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T40D - ExcBkfilGT5FT  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
11 NS0201931 CUBIC  
YARD  
225.00  
T40E - SameasT40CNoBkfil  
12 NS0201932 CUBIC  
YARD  
285.00  
T40F - SameasT40DNoBkfil  
13 NS0201933 CUBIC  
YARD  
55.00  
T40G - BkfillOnlyGT5ft  
14 NS0201934 CUBIC  
YARD  
50.00  
T40H - BkfillOnlyLT5ft  
15 NS0171179 CYLIND  
ER  
75.00  
T43 - EXCAMACHINEHAND<10FT  
16 NS0171303 CYLIND  
ER  
500.00  
T50 - ROCK  
17 NS0171307 CYLIND  
ER  
575.00  
T51 - ROCK REMOVAL-DISPOSE  
18 NS0171309 CYLIND  
ER  
450.00  
T51H - ROCKEXAVDRILLSPLIT  
19 NS0171314 CYLIND  
ER  
510.00  
T53 - INTACT MASONRY  
20 NS0201935 CUBIC  
YARD  
41.00  
T91A - FurnDelivCleanFill  
21 NS0201936 CUBIC  
YARD  
63.00  
T92A - FurnDelivSandFill  
22 NS0201937 CUBIC  
YARD  
56.00  
T94A - FurnDelivNo4Compact  
23 NS0171365 CYLIND  
ER  
55.00  
T95 - TRUCKFROMSITE  
24 NS0201938 CUBIC

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YARD

150.00

T95A - RenXportDisposWaste

25 NS0171367 CYLIND

ER

76.00

T96 - CRUSHED STONE

26 NS0170601 SQUARE

FOOT

14.00

T101 - SOLID SHEETING

27 NS0170609 SQUARE

FOOT

6.00

T110 - VEHICULAR PLATES

28 NS0170614 SQUARE

FOOT

7.00

T114 - PLATERENTALMAINT.

29 NS0201927 LINEAR 15.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

FOOT

T180B - FurnInstPlastConduit

30 NS0201928 EACH 110.00

T180C - BrkOutRestPOE

31 NS0170951 CYLIND

ER

995.00

T190 - STRUCTURALCONC<5CY

32 NS0170952 CYLIND

ER

950.00

T191 - STRUCTURALCONC>5CY

33 NS0170953 CYLIND

ER

475.00

T192 - SIMPLECONCNOREINF

34 NS0170975 HOUR 120.00

T210 - DEWATERING

35 NS0170977 HOUR 20.00

T210B - DEWATERINGEQPONLY

36 NS0170988 HOUR 30.00

T212A - PREMMHOT/SAT

37 NS0170989 HOUR 50.00

T212B - PREMMHSUN/HOL

38 NS0171059 HOUR 75.00

T301 - LABORER/DRILLRUNNER

39 NS0171071 HOUR 94.00

T302 - LAB FOREMAN W/TRUCK

40 NS0171077 HOUR 130.00

T303 - TEAMSTER, W/DUMPTRUCK

41 NS0171084 HOUR 23.00

T304 - COMPR/JHAMMERS

42 NS0171095 HOUR 170.00

T305 - OPENG W/BACKHOE

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43 NS0171113 HOUR 120.00  
T306 - TIMBERMAN/TOOLS/TRAN  
44 NS0201939 CUBIC  
YARD  
50.00  
TM01 - MoveStokplMatlHand  
45 NS0201940 CUBIC  
YARD  
31.00  
TM02 - MoveStckplMatlMach  
46 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
47 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
48 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
49 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
50 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
51 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
52 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
53 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

54 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
**This line CANCELED on 03-JUL-2013**  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**  
**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**STANDARD TERMS AND CONDITIONS**  
**FOR**

**CONSTRUCTION CONTRACTS**  
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July 1, 2012

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Appendix A - Required Clauses and Certifications

### STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

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

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

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B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4. Price and Payment.

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its



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successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated

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therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing,

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sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such

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conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

### **9. Contractor's Performance.**

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

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B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Blanket Purchase Agreement 4152855,

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Blanket Purchase Agreement 4152855,

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any

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portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(ii) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

(iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Blanket Purchase Agreement 4152855,

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or

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a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Blanket Purchase Agreement 4152855,

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor,(or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Blanket Purchase Agreement 4152855,

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work.

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A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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



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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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in

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connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

(i)halt the continuation of such Work; and

(ii)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(iii)perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or

(iv)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25.Subcontracting.

A.Contractors 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 tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison

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or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Blanket Purchase Agreement 4152855,

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29.Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay

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caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33. Termination for Convenience.**

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Blanket Purchase Agreement 4152855,

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from

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termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Edison and O&R shall be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and



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occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Blanket Purchase Agreement 4152855,

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

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To the fullest extent allowed by law, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Blanket Purchase Agreement 4152855,

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:  
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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the

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written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Blanket Purchase Agreement 4152855,

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all

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intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

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

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cause or permit the disclosure to any third party of any material information concerning the O&R

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such  
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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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.  
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51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52.Submission to Jurisdiction/Choice of Forum.

A.Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53.Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54.Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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

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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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### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### 1. Nature of These Special Conditions

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Blanket Purchase Agreement 4152855,

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Con Edison has met its minimum purchase obligation as set forth below.

##### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

##### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

##### 5. Partial Deliveries

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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##### 6. Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

##### 7. Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

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### 8. Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications Blanket Purchase Agreement 4152855,

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incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of



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title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification,

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and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the Blanket Purchase Agreement 4152855,

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### **Signatures**

Blanket Purchase Agreement 4152855,

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### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 11

CONTRACTOR: LEWIS TREE SERVICE INC

PURCHASE ORDER NO.: 4155748

BID COMPARISON:

\$12,863,414

\$12,990,486

\$17,283,853

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Blanket Purchase Agreement 4155748, 0  
Proprietary and Confidential Page 1 of 44  
**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**  
Order **4155748**  
Revision **0**

PO Approved Date **06/05/2013**  
Revision Date

Current Buyer **David Blaut**  
Supplier: **LEWIS TREE SERVICE INC**  
**300 LUCIUS GORDON DR**  
**WEST HENRIETTA, NY 14586**  
**UNITED STATES**

Supplier  
Contact:  
**MARTIN SHANNON**  
**(585) 295-2463**

Key  
ConEd  
Contact:

**David Blaut**  
Ship To: **4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Bill To: **PO Box 799**  
**Cooper Station**  
**New York, NY 10276-0799**  
**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**9139 Net 30**

Effective Start Date Effective End Date Amount Agreed (USD)  
**06/01/2013 05/31/2016 9,500,000.00**

**Notes: BROOKLYN/QUEENS TREE TRIMMING (VEGETATION MANAGEMENT) DISTRIBUTION**  
YEAR 1 - 6/1/13 - 5/31/14  
YEAR 2 - 6/1/14 - 5/31/15  
YEAR 3 - 6/1/15 - 5/31/16

Pricing will remain firm for the first year with escalation of 3.5% for the 2nd year and 6.84% for the 3rd year, respectively from year one pricing for unit pricing only

-----  
Perform vegetation management by trimming and/or removing trees which may interfere with the overhead electric distribution systems for Consolidated Edison Company of New York, Inc. (CECONY) in Brooklyn and Queens.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER THIS BLANKET PURCHASE AGREEMENT IS \$9,500,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED

Blanket Purchase Agreement 4155748, 0  
Proprietary and Confidential Page 2 of 44

MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.

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This agreement will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison's invitation to RFQ# 36032 and all documents referenced therein.
- Con Edison's Clarifications/Addendum to bid event dated 10/10/12, 10/15/12, 10/24/12, 11/4/12.
- Con Edison's Standard Terms and Conditions of Service Contracts dated 7/1/12 as modified February 20, 2013 for Lewis Tree Service, Inc.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Tree Trimming Requirements For Overhead Electric Distribution Lines Specification EO-10353 revision 7 dated 9/11/12
- VM-02-09 – Distribution VM Maintenance Unit Descriptions
- Lewis Tree Service, Inc. signed Disclosure Form dated 11/16/12
- Con Edison always reserves the right to not release crews
- Contract will include a storm unit price to provide accessible funding for small storm emergency events defined as a duration three or less days estimated at under \$500,000. Large storm emergency events will continue to be funded under separate agreements at the time of the event.

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Reference Documents: CLARIFICATION 4.docx  
 CLARIFICATION 3.docx  
 CLARIFICATION 2.docx  
 CLARIFICATION 1.docx  
 SPECS CECONY DISTRIBUTION.pdf  
 Con Edison 2010-2012 Distribution Unit Descriptions 9-22-09.doc  
 Purchasing Disclosure Form.pdf  
 PRE AWARD DOCS.pdf  
 ACCEPTANCE TO T&C EMAIL.msg  
 Supplemental\_Construction\_Contract\_Requirements\_(SCCR)  
 6-10-08 R1.pdf

All prices and amounts on this order are expressed in USD  
 Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
 (USD)  
 Amount  
 (USD)

1	NS1931305	HOUR	59.93						
	SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 1								
2	NS1931306	HOUR	85.15						
	SUPERVISOR - OVERTIME - PER HOUR - YEAR 1								
3	NS1931307	HOUR	107.22						
	SUPERVISOR - PREMIUM TIME - PER HOUR - YEAR 1								
4	NS1931308	HOUR	59.91						
	LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 1								
5	NS1931309	HOUR	82.54						
	LEADER (FOREMAN) - OVERTIME - PER HOUR - YEAR 1								
6	NS1931310	HOUR	102.00						
	Blanket Purchase Agreement 4155748, 0								
	Proprietary and Confidential Page 3 of 44								
	Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price								
	(USD)								
	Amount								
	(USD)								
	LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 1								
7	NS1931311	HOUR	53.44						
	SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1								
8	NS1931312	HOUR	73.20						
	SR.TRIMMER - OVERTIME - PER HOUR - YEAR 1								
9	NS1931313	HOUR	88.70						
	SR.TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1								
10	NS1931314	HOUR	47.87						

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JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1  
11 NS1931315 HOUR 65.10  
JR. TRIMMER - OVERTIME - PER HOUR - YEAR 1  
12 NS1931316 HOUR 78.85  
JR. TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1  
13 NS1931317 HOUR 41.27  
GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 1  
14 NS1931318 HOUR 57.84  
GROUND TRAINEE - OVERTIME - PER HOUR - YEAR 1  
15 NS1931319 HOUR 71.17  
GROUND TRAINEE - PREMIUM TIME - PER HOUR - YEAR 1  
16 NS1931323 HOUR 59.93  
GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 1  
17 NS1931324 HOUR 85.15  
GENERAL OPERATING SUPERVISION - OVERTIME - PER HOUR - YEAR 1  
18 NS1931325 HOUR 107.22  
GENERAL OPERATING SUPERVISION - PREMIUM TIME - PER HOUR - YEAR 1  
19 NS1931326 HOUR 107.78  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 1  
20 NS1931327 HOUR 140.38  
BOOMTRUCK OPERATOR & HELPER - OVERTIME - PER HOUR - YEAR 1  
21 NS1931328 HOUR 173.17  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME - PER HOUR - YEAR 1  
22 NS1931329 HOUR 53.44  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 1  
23 NS1931330 HOUR 65.10  
NOTIFICATION FORESTER - OVERTIME - PER HOUR - YEAR 1  
24 NS1931331 HOUR 78.85  
NOTIFICATION FORESTER - PREMIUM TIME - PER HOUR - YEAR 1  
25 NS1931332 HOUR 39.82  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 1  
26 NS1931333 HOUR 48.91  
FLAG PERSON - OVERTIME - PER HOUR - YEAR 1  
27 NS1931334 HOUR 60.87  
FLAG PERSON - PREMIUM TIME - PER HOUR - YEAR 1  
28 NS1931383 HOUR 24.11  
4WD BUCKET TRUCK - HOURLY - YEAR 1  
29 NS1931385 WEEK 964.40  
4WD BUCKET TRUCK - WEEKLY - YEAR 1  
30 NS1931390 HOUR 15.95  
50'-55' BUCKET TRUCK - HOURLY - YEAR 1  
31 NS1931391 WEEK 638.00  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 1  
32 NS1931395 HOUR 19.29  
55'-60' BUCKET TRUCK - HOURLY - YEAR 1  
33 NS1931396 WEEK 771.60  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 1  
Blanket Purchase Agreement 4155748, 0  
Proprietary and Confidential Page 4 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
34 NS1931399 HOUR 24.11  
60'-65' BUCKET TRUCK - HOURLY - YEAR 1  
35 NS1931400 WEEK 964.40  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 1  
36 NS1931403 HOUR 33.27  
65'-70' BUCKET TRUCK - HOURLY - YEAR 1  
37 NS1931405 WEEK 1330.80

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65'-70' BUCKET TRUCK - WEEKLY - YEAR 1  
38 NS1931424 HOUR 5.34  
DISC CHIPPER - HOURLY - YEAR 1  
39 NS1931426 WEEK 213.60  
DISC CHIPPER - WEEKLY - YEAR 1  
40 NS1931427 HOUR 3.73  
DRUM CHIPPER - HOURLY - YEAR 1  
41 NS1931428 WEEK 149.20  
DRUM CHIPPER - WEEKLY - YEAR 1  
42 NS1931437 HOUR 10.65  
SPLIT DUMP - HOURLY - YEAR 1  
43 NS1931438 WEEK 426.00  
SPLIT DUMP - WEEKLY - YEAR 1  
44 NS1931451 HOUR 11.18  
PICK UP TRUCK - HOURLY - YEAR 1  
45 NS1931452 WEEK 447.20  
PICK UP TRUCK - WEEKLY - YEAR 1  
46 NS1931455 HOUR 40.80  
LOG TRUCK - HOURLY - YEAR 1  
47 NS1931457 WEEK 1632.00  
LOG TRUCK - WEEKLY - YEAR 1  
48 NS1931462 HOUR 81.41  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 1  
49 NS1931464 WEEK 3256.40  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 1  
50 NS1931467 HOUR 197.40  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 1  
51 NS1931468 WEEK 7896.00  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 1  
52 NS1931473 HOUR 60.35  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 2  
53 NS1931474 HOUR 86.10  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
54 NS1931475 HOUR 108.73  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
55 NS1931476 HOUR 62.25  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 2  
56 NS1931477 HOUR 85.68  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
57 NS1931478 HOUR 105.05  
LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 2  
58 NS1931479 HOUR 55.50  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
59 NS1931480 HOUR 75.40  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
60 NS1931481 HOUR 91.35  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
61 NS1931482 HOUR 49.59  
Blanket Purchase Agreement 4155748, 0  
Proprietary and Confidential Page 5 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
62 NS1931483 HOUR 67.05  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
63 NS1931484 HOUR 81.20  
JR. TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
64 NS1931485 HOUR 42.74

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GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 2

65 NS1931486 HOUR 59.88

GROUND TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

66 NS1931487 HOUR 73.77

GROUND TRAINEE - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

67 NS1931491 HOUR 60.35

GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 2

68 NS1931492 HOUR 86.10

GENERAL OPERATING SUPERVISION - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

69 NS1931493 HOUR 108.73

GENERAL OPERATING SUPERVISION - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR

2

70 NS1931494 HOUR 112.11

BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 2

71 NS1931495 HOUR 145.56

BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

72 NS1931496 HOUR 178.82

BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

73 NS1931497 HOUR 55.30

NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 2

74 NS1931498 HOUR 67.05

NOTIFICATION FORESTER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

75 NS1931499 HOUR 81.20

NOTIFICATION FORESTER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

76 NS1931500 HOUR 41.23

FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 2

77 NS1931501 HOUR 50.72

FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 2

78 NS1931502 HOUR 63.18

FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2

79 NS1931551 HOUR 24.47

4WD BUCKET TRUCK - HOURLY - YEAR 2

80 NS1931553 WEEK 978.80

4WD BUCKET TRUCK - WEEKLY - YEAR 2

81 NS1931558 HOUR 16.27

50'-55' BUCKET TRUCK - HOURLY - YEAR 2

82 NS1931559 WEEK 650.80

50'-55' BUCKET TRUCK - WEEKLY - YEAR 2

83 NS1931563 HOUR 19.58

55'-60' BUCKET TRUCK - HOURLY - YEAR 2

84 NS1931564 WEEK 783.20

55'-60' BUCKET TRUCK - WEEKLY - YEAR 2

85 NS1931567 HOUR 24.47

60'-65' BUCKET TRUCK - HOURLY - YEAR 2

86 NS1931568 WEEK 978.80

60'-65' BUCKET TRUCK - WEEKLY - YEAR 2

87 NS1931571 HOUR 33.76

65'-70' BUCKET TRUCK - HOURLY - YEAR 2

88 NS1931573 WEEK 1350.40

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

65'-70' BUCKET TRUCK - WEEKLY - YEAR 2

89 NS1931592 HOUR 5.42

DISC CHIPPER - HOURLY - YEAR 2

90 NS1931594 WEEK 216.80

DISC CHIPPER - WEEKLY - YEAR 2



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91 NS1931595 HOUR 3.81  
DRUM CHIPPER - HOURLY - YEAR 2  
92 NS1931596 WEEK 152.40  
DRUM CHIPPER - WEEKLY - YEAR 2  
93 NS1931605 HOUR 10.81  
SPLIT DUMP - HOURLY - YEAR 2  
94 NS1931606 WEEK 432.40  
SPLIT DUMP - WEEKLY - YEAR 2  
95 NS1931619 HOUR 11.35  
PICK UP TRUCK - HOURLY - YEAR 2  
96 NS1931620 WEEK 454.00  
PICK UP TRUCK - WEEKLY - YEAR 2  
97 NS1931623 HOUR 41.41  
LOG TRUCK - HOURLY - YEAR 2  
98 NS1931625 WEEK 1656.40  
LOG TRUCK - WEEKLY - YEAR 2  
99 NS1931630 HOUR 83.03  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 2  
100 NS1931632 WEEK 3321.20  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 2  
101 NS1931635 HOUR 207.27  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 2  
102 NS1931636 WEEK 8290.80  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 2  
103 NS1931641 HOUR 62.62  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 3  
104 NS1931642 HOUR 88.96  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
105 NS1931643 HOUR 112.14  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
106 NS1931644 HOUR 64.52  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 3  
107 NS1931645 HOUR 88.70  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
108 NS1931646 HOUR 108.20  
LEADER (FOREMAN) PREMIUM TIME (SUN/HOLIDAY) - YEAR 3  
109 NS1931647 HOUR 57.49  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
110 NS1931648 HOUR 77.69  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
111 NS1931649 HOUR 94.10  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
112 NS1931650 HOUR 51.24  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
113 NS1931651 HOUR 69.05  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
114 NS1931652 HOUR 83.65  
JR. TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
115 NS1931653 HOUR 44.13  
GROUND TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 3  
Blanket Purchase Agreement 4155748, 0  
Proprietary and Confidential Page 7 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
116 NS1931654 HOUR 61.78  
GROUND TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
117 NS1931655 HOUR 76.20  
GROUND TRAINEE - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3

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118 NS1931659 HOUR 62.62  
GENERAL OPERATING SUPERVISION - STRAIGHT TIME - PER HOUR - YEAR 3  
119 NS1931660 HOUR 88.96  
GENERAL OPERATING SUPERVISION - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
120 NS1931661 HOUR 112.14  
GENERAL OPERATING SUPERVISION - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR  
3  
121 NS1931662 HOUR 115.76  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 3  
122 NS1931663 HOUR 150.48  
BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
123 NS1931664 HOUR 184.40  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
124 NS1931665 HOUR 56.95  
NOTIFICATION FORESTER - STRAIGHT TIME - PER HOUR - YEAR 3  
125 NS1931666 HOUR 69.05  
NOTIFICATION FORESTER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
126 NS1931667 HOUR 83.65  
NOTIFICATION FORESTER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
127 NS1931668 HOUR 42.55  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 3  
128 NS1931669 HOUR 51.42  
FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
129 NS1931670 HOUR 64.34  
FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
130 NS1931719 HOUR 24.83  
4WD BUCKET TRUCK - HOURLY - YEAR 3  
131 NS1931721 WEEK 993.20  
4WD BUCKET TRUCK - WEEKLY - YEAR 3  
132 NS1931724 HOUR 16.59  
50' BUCKET TRUCK - HOURLY - YEAR 3  
133 NS1931725 WEEK 663.80  
50' BUCKET TRUCK - WEEKLY - YEAR 3  
134 NS1931731 HOUR 19.87  
55'-60' BUCKET TRUCK - HOURLY - YEAR 3  
135 NS1931732 WEEK 794.80  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 3  
136 NS1931735 HOUR 24.83  
60'-65' BUCKET TRUCK - HOURLY - YEAR 3  
137 NS1931736 WEEK 993.20  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 3  
138 NS1931739 HOUR 34.26  
65'-70' BUCKET TRUCK - HOURLY - YEAR 3  
139 NS1931741 WEEK 1370.00  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 3  
140 NS1931760 HOUR 5.50  
DISC CHIPPER - HOURLY - YEAR 3  
141 NS1931762 WEEK 220.00  
DISC CHIPPER - WEEKLY - YEAR 3  
142 NS1931763 HOUR 3.90  
DRUM CHIPPER - HOURLY - YEAR 3  
Blanket Purchase Agreement 4155748, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
143 NS1931765 WEEK 156.00  
DRUM CHIPPER - WEEKLY - YEAR 3  
144 NS1931774 HOUR 10.97

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SPLIT DUMP - HOURLY - YEAR 3  
145 NS1931775 WEEK 438.80  
SPLIT DUMP - WEEKLY - YEAR 3  
146 NS1931788 HOUR 11.52  
PICK UP TRUCK - HOURLY - YEAR 3  
147 NS1931789 WEEK 460.80  
PICK UP TRUCK - WEEKLY - YEAR 3  
148 NS1931792 HOUR 42.03  
LOG TRUCK - HOURLY - YEAR 3  
149 NS1931794 WEEK 1681.20  
LOG TRUCK - WEEKLY - YEAR 3  
150 NS1931799 HOUR 84.69  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 3  
151 NS1931801 WEEK 3387.60  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 3  
152 NS1931804 HOUR 220.00  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 3  
153 NS1931805 WEEK 8800.00  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 3  
154 NS1931811 MILE 4001.50  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (CONED BROOK/QUEENS) - PER MILE - YEAR 1  
155 NS1931830 EACH 95.00  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
156 NS1931831 EACH 103.86  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
157 NS1931832 EACH 110.22  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
158 NS1931833 EACH 131.30  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
159 NS1931834 EACH 207.52  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
160 NS1931835 EACH 263.89  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
161 NS1931836 EACH 251.81  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
162 NS1931837 EACH 339.00  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
163 NS1931838 EACH 445.84  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
164 NS1931839 EACH 378.55  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
165 NS1931840 EACH 630.50  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
166 NS1931841 EACH 781.28  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
167 NS1931842 EACH 607.02  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
168 NS1931843 EACH 945.87  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
169 NS1931844 EACH 1200.00  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
170 NS1931845 EACH 990.91  
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REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
171 NS1931846 EACH 1602.00

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REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
172 NS1931847 EACH 1835.57  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
173 NS1931848 EACH 80.58  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
174 NS1931849 EACH 101.17  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
175 NS1931850 EACH 106.99  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
176 NS1931851 EACH 101.37  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
177 NS1931852 EACH 173.18  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
178 NS1931853 EACH 256.00  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
179 NS1931854 EACH 149.25  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
180 NS1931855 EACH 287.00  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
181 NS1931856 EACH 455.00  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
182 NS1931857 EACH 325.56  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
183 NS1931858 EACH 536.66  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
184 NS1931859 EACH 801.40  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
185 NS1931860 EACH 369.42  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
186 NS1931861 EACH 833.30  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
187 NS1931862 EACH 1211.40  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
188 NS1931863 EACH 691.23  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
189 NS1931864 EACH 1298.48  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
190 NS1931865 EACH 1697.00  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
191 NS1931866 EACH 75.00  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 1  
192 NS1931867 EACH 268.13  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 1  
193 NS1931868 EACH 339.00  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 1  
194 NS1931869 EACH 30.00  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 1  
195 NS1931870 EACH 49.45  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 1  
196 NS1931871 EACH 66.62  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 1  
197 NS1931872 EACH 72.20  
CUT VINES AND TREAT - PER LOCATION - YEAR 1  
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198 NS1931880 EACH 222.00

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GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 1  
199 NS1931881 EACH 331.00  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 1  
200 NS1931883 HOUR 132.52  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
201 NS1931886 HOUR 146.39  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
202 NS1931889 HOUR 171.14  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
203 NS1931892 HOUR 177.19  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
204 NS1931901 HOUR 148.58  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 1  
205 NS1931903 HOUR 260.00  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 1  
206 NS1931909 MILE 4141.55  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (CONED BROOK/QUEENS) - PER MILE - YEAR 2  
207 NS1931928 EACH 98.33  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
208 NS1931929 EACH 107.50  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
209 NS1931930 EACH 114.08  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
210 NS1931931 EACH 135.90  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
211 NS1931932 EACH 214.78  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
212 NS1931933 EACH 273.13  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
213 NS1931934 EACH 260.62  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
214 NS1931935 EACH 350.87  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
215 NS1931936 EACH 461.44  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
216 NS1931937 EACH 391.80  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
217 NS1931938 EACH 652.57  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
218 NS1931939 EACH 808.62  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
219 NS1931940 EACH 628.27  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
220 NS1931941 EACH 978.98  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
221 NS1931942 EACH 1242.00  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
222 NS1931943 EACH 1025.59  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
223 NS1931944 EACH 1658.07

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REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
224 NS1931945 EACH 1899.81  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
225 NS1931946 EACH 83.40  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
226 NS1931947 EACH 104.71  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
227 NS1931948 EACH 110.73  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
228 NS1931949 EACH 104.92  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
229 NS1931950 EACH 179.24  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
230 NS1931951 EACH 264.96  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
231 NS1931952 EACH 154.47  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
232 NS1931953 EACH 297.05  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
233 NS1931954 EACH 470.93  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
234 NS1931955 EACH 336.95  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
235 NS1931956 EACH 555.44  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
236 NS1931957 EACH 829.45  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
237 NS1931958 EACH 382.35  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
238 NS1931959 EACH 862.47  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
239 NS1931960 EACH 1253.80  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
240 NS1931961 EACH 715.42  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
241 NS1931962 EACH 1343.93  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
242 NS1931963 EACH 1756.40  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
243 NS1931964 EACH 77.63  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 2  
244 NS1931965 EACH 277.51  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 2  
245 NS1931966 EACH 350.87  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 2  
246 NS1931967 EACH 31.05  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 2  
247 NS1931968 EACH 51.18  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 2  
248 NS1931969 EACH 68.95  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 2  
249 NS1931970 EACH 74.73  
CUT VINES AND TREAT - PER LOCATION - YEAR 2  
250 NS1931978 EACH 229.77  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 2  
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251 NS1931979 EACH 342.59  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 2  
252 NS1931981 HOUR 137.16  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
253 NS1931984 HOUR 151.51  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
254 NS1931987 HOUR 177.13  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
255 NS1931990 HOUR 183.39  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
256 NS1931999 HOUR 153.78  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 2  
257 NS1932001 HOUR 269.10  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 2  
258 NS1932007 MILE 4275.20  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (CONED BROOK/QUEENS) - PER MILE - YEAR 3  
259 NS1932026 EACH 101.50  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
260 NS1932027 EACH 110.96  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
261 NS1932028 EACH 117.76  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
262 NS1932029 EACH 140.28  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
263 NS1932030 EACH 221.71  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
264 NS1932031 EACH 281.94  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
265 NS1932032 EACH 269.03  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
266 NS1932033 EACH 362.19  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
267 NS1932034 EACH 476.34  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
268 NS1932035 EACH 404.44  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
269 NS1932036 EACH 673.63  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
270 NS1932037 EACH 834.72  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
271 NS1932038 EACH 648.54  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
272 NS1932039 EACH 1010.57  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
273 NS1932040 EACH 1282.08  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
274 NS1932041 EACH 1058.69  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
275 NS1932042 EACH 1711.58  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
276 NS1932043 EACH 1961.12  
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REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
277 NS1932044 EACH 86.09  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
278 NS1932045 EACH 108.09  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
279 NS1932046 EACH 114.31  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
280 NS1932047 EACH 108.30  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
281 NS1932048 EACH 185.03  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
282 NS1932049 EACH 273.51  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
283 NS1932050 EACH 159.46  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
284 NS1932051 EACH 306.63  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
285 NS1932052 EACH 486.12  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
286 NS1932053 EACH 347.83  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
287 NS1932054 EACH 573.37  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
288 NS1932055 EACH 856.22  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
289 NS1932056 EACH 394.69  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
290 NS1932057 EACH 890.30  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
291 NS1932058 EACH 1294.26  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
292 NS1932059 EACH 738.51  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
293 NS1932060 EACH 1387.30  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
294 NS1932061 EACH 1813.07  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
295 NS1932062 EACH 80.13  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR 3  
296 NS1932063 EACH 286.47  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 3  
297 NS1932064 EACH 362.19  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 3  
298 NS1932065 EACH 32.05  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 3  
299 NS1932066 EACH 52.83  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 3  
300 NS1932067 EACH 71.18  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 3  
301 NS1932068 EACH 77.14  
CUT VINES AND TREAT - PER LOCATION - YEAR 3  
302 NS1932076 EACH 237.18  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 3  
303 NS1932077 EACH 353.64  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 3  
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304 NS1932079 HOUR 141.58

2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

305 NS1932082 HOUR 156.40

2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

306 NS1932085 HOUR 182.85

3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

307 NS1932088 HOUR 189.31

3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

308 NS1932097 HOUR 158.74

2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 3

309 NS1932099 HOUR 277.78

2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 3

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**Terms and Conditions**

**Standard Terms**

**NEGOTIATED CON EDISON SERVICES TERMS AND CONDITIONS 2.20.13 LEWIS**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**SERVICE CONTRACTS**

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July 1, 2012

As modified February 20, 2013 for Lewis Tree Service, Inc.

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Appendix A - Required Clauses and Certifications

### STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS

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

"Con Edison"-Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for services to be performed for Con Edison or its affiliate, Orange and Rockland Utilities, Inc. ("O&R").

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

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"Contract"-The contract between Con Edison and the Contractor consisting of (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or the 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,

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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 the Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if the Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of the Contractor's offer; provided, however, if the Contractor's offer contains terms additional to or different from those or 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 acknowledgement electronically by the Contractor of the Contract in the Procurement System or, if the Contractor is not enabled in the Procurement System, by the signing by the Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing the Contractor's acceptance thereof), or the Contractor's commencement or continuation of the services ordered under the Contract following its receipt of the Contract or such other writing, such performance signifying the Contractor's acceptance of the terms thereof.

3.Amendments. No revision or 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 the Contractor within thirty (30) days after receipt and processing of proper invoices with required supporting documentation.

B.Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department, after the rendering of the services for which payment is to be made, in such detail and with such supporting documentation as 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 reimbursable supplies and materials. If the Contract provides for services to be rendered on an hourly-rate basis, invoices shall include the number of hours worked and the hourly Blanket Purchase Agreement 4155748,

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rate for each person performing services as well as the total amount invoiced, and shall be accompanied by signed time sheets and any other data or supporting documentation reasonably required by Con Edison.

C.Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in the progress of the services.

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

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

### 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 services furnished hereunder, and Con Edison agrees to pay or reimburse the Contractor 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 Contractor for any interest, penalties or expenses the Contractor 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 the

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Contractor shall cooperate and assist Con Edison therewith.

B. Payroll Taxes and Contributions. The Contractor assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of the state of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the services to be performed.

7. Time of Performance. The Contractor shall perform the services to be furnished in accordance with any schedule of performance stated herein. It is understood and agreed by the Contractor that **TIME IS OF THE ESSENCE OF THE CONTRACT** and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by Con Edison of revised schedules from the Contractor during the performance of the services shall not be deemed a waiver of the contract completion date.

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8. Excusable Delay. The Contractor 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 the Contractor, a strike not caused or prolonged by an unfair labor practice of the Contractor, public disorder or riot, a failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in the Contractor'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 the Contractor from another source. The Contractor 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 Contractor'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 the Contractor's performance hereunder at any time. The Contractor 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, the Contractor 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 the Contractor establishes to the satisfaction of Con Edison were incurred by the Contractor solely by reason of the suspension, provided, however, that such entitlement is conditioned upon the Contractor's notifying Con Edison in writing within fifteen (15) days of the suspension that additional costs will or may be incurred thereby and upon the Contractor'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 Contractor to receive any additional costs.

10. Warranties. The Contractor warrants that services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practice. The Contractor also warrants that services furnished hereunder shall meet any and all tests and conform strictly to all specifications and comply strictly with all performance requirements contained in the Contract. The Contractor further warrants any goods furnished hereunder in connection with such services to be new and free from defects in title, design, material, fabrication and workmanship, to conform strictly to any applicable samples and to specifications, drawings and other descriptions herein, and to be suitable for the purpose intended. Should any failure to meet any of the warranties stated herein appear within eighteen (18) months of the completion of all services rendered hereunder, the Contractor shall upon notice by Con Edison reperform the services and replace or repair any goods not conforming to the foregoing warranties promptly and without expense to Con Edison. In the event of failure of the Contractor promptly to remedy as aforesaid any breach of warranty Con Edison may correct the deficiencies and charge the Contractor the cost thereof. The aforesaid warranties shall survive acceptance of and payment for the services furnished hereunder. After any such services have been redone and materials or articles replaced or repaired pursuant to the foregoing warranties, they shall be subject anew to the foregoing warranties. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

11. Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any Blanket Purchase Agreement 4155748,

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specifications, drawings or data incorporated herein. Any such changes shall be directed in writing (electronically or in print form). 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 Contractor for adjustment under this Article shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison, without prejudice to its right to 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 Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If the Contractor 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 the Contractor without recourse to Con Edison.

C. For time and material work, Contractor 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 Article 10 (Warranties) above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs, including, 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 the Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract work 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.

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B. For each claim for Non-Contract Work, as defined in A(i) of this Article, the Contractor must give written notice to Con Edison's designated representative within 5 days of when the Contractor 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, the Contractor must give written notice to Con Edison's designated representative within five (5) days of Contractor'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 Contractor 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 Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, the Contractor 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

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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 in 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 the Contractor's bid for the performance of the work that had its cost Blanket Purchase Agreement 4155748,

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increased, the actual cost to the Contractor to perform such work, and the amount of the Increased Costs for which the Contractor claims Con Edison is responsible; 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. Contractor'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 Contractor that neither the Contractor 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 the Contractor 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 the Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the services hereunder are being performed and will be performed in full accordance with the requirement of the Contract and on schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to the premises at which services hereunder are being performed 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 services rendered 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 a deficiency in the Contractor's performance or that it was not in accordance with the Contract requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by Con Edison or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish goods and services fully in accordance with the requirements of the Contract. Any articles or equipment serviced or repaired hereunder shall be subject to inspection and testing by Con Edison after completion of the services (and after delivery to Con Edison, if it has been removed from Con Edison's premises), and final payment for repaired articles or equipment shall not be due before acceptance of the articles or equipment after testing. Payment prior to testing shall not constitute acceptance.

15. Personnel.

A. Personnel assigned to perform services hereunder who are specifically designated personnel in the Contract shall devote substantially all their working time to performing work under the Contract, unless there is an express provision to the contrary in the Contract, and shall not be removed from such assignments without the prior written consent of Con Edison. Con Edison shall have the right to approve replacements for such designated personnel. Contractor shall remove any personnel from performing services under the Contract as may be requested by Con Edison.

B. The Contractor and its permitted subcontractors shall not employ any Con Edison or O&R employee to perform any services hereunder without the prior written permission of Con Edison. Further, neither Contractor nor any of its subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the Blanket Purchase Agreement 4155748,

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subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order."

### **16.Subcontracting.**

A.The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval. Nothing contained herein shall create any contractual rights in any subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the services furnished hereunder to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, and comply with the other requirements relating to insurance as are required of the Contractor hereunder, including, but not limited to, the requirements relating to naming Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Subcontracts shall provide for the Contractor the same rights against the subcontractor as Con Edison and O&R have hereunder against the Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Attention:Purchasing Department  
Section Manager,  
Technology and Strategic Initiatives  
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17.Assignment. The Contractor 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, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract.

18.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 the Contractor or its subcontractors in connection with the Contract shall, except to the extent indicated in writing by Con Edison (or O&R with respect to services ordered for O&R), 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 upon completion of such performance. The Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding its services 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. The Contractor acknowledges that its violation of the provisions of this Article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, the Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this Article, in addition to their remedies at law.

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19. Infringement. If the Contractor, 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 Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use under the Contract by securing a suitable agreement from the owner of such right. The Contractor 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 out of or related to a claim against an Indemnified Party that the services rendered hereunder, or any goods, designs, processes or works of authorship (including computer programs and documentation) supplied in connection therewith or resulting therefrom, infringe any patent, copyright, trademark or any other proprietary right. The Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded against an Indemnified Party. Con Edison shall notify the Contractor of any such claim, suit or proceeding in writing and give the Contractor authority, information and assistance (at the Contractor's expense) for the defense thereof. In the event that the use of any goods, designs, processes or works of authorship furnished hereunder is enjoined, the Contractor shall promptly, at its own expense, either (a) procure for Con Edison (or O&R, with respect to services performed for O&R) the right to continue using such goods, designs, processes or works of authorship or (b) with the approval of Con Edison, (i) replace them with noninfringing goods, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

20. Indemnification. To the fullest extent allowed by law, the Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns 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 the Contractor or any subcontractor, or any of their agents, servants, representatives or employees, or non-parties to the Contract under Blanket Purchase Agreement 4155748,

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

21. Insurance. The Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract), at its own expense, 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 any part of the services involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Contractor shall be for not less than \$7,500,000 per occurrence for bodily injury or death or property damage or a combined single limit of not less than \$7,500,000 per occurrence.) There shall be no policy deductibles without 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



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additional insureds with respect to the services furnished hereunder and completed operations. There shall be no exclusion for claims by Contractor's employees against Con Edison or O&R based on injury to Contractor's or any subcontractor's employees.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Contractor or any Subcontractors, with a combined single limit of not less than \$1,000,000 per Blanket Purchase Agreement 4155748,

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accident for bodily injury or death and property damage.

D. Where the work involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by the Contractor or any subcontractors, 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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Contractor shall require the subcontractor to name Contractor, 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 services include any architectural, 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 services to be furnished under the Contract.

The Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days' prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 work at Con Edison's premises the Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above 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 services and completed operations. Con Edison shall have the right, upon request, to require the Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor, 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 the Contractor's contractual obligations hereunder.

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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)

22. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by written notice to the Contractor terminate the Contract, in whole or in part, without liability to the Contractor except as stated in this Article. In the event of such termination, in full discharge of its obligations to the Contractor in respect of the Contract and such termination, Con Edison shall pay the Contractor for services performed prior to

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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 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 the Contractor of any obligation which may arise out of services performed prior to termination. In no event shall Con Edison be liable to the Contractor for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales.

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

24.Ownership of Documents and Materials; Ownership of Intangible Property.

A.With respect to all documents and materials, including, but not limited to, drawings, plans, Blanket Purchase Agreement 4155748,

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

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

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Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Blanket Purchase Agreement 4155748,

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Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

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

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

26. Compliance with Laws. The Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder. The Contractor shall provide Con Edison, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article. Without limiting the generality of the foregoing, the Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which are 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 contractors to the federal government.

27. Set-Off. Con Edison shall have the right to set off against any sums due the Contractor under the Contract any claims Con Edison may have against the Contractor under the Contract or any other contract between Con Edison Blanket Purchase Agreement 4155748,

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and the Contractor without prejudice to the rights of the parties in respect of such claims.

28. Investigation and Audit. Contractor 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 services furnished under the Contract, and the Contractor 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 22 (Termination for Convenience) of these Standard Terms and Conditions, the Contractor 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 respective authorized representatives during the term of the Contract and for a period of six (6) years after final payment under the Contract. If an investigation, audit, or inquiry discloses that Con Edison has paid the Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, or for any other costs that were improperly charged, the Contractor shall refund to Con Edison an amount equal to such payment.

29. Required Approvals

A. The Contractor will not be permitted to perform any field service work, including but not limited to installation, maintenance, and repair, until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

B. Where required by the Contract, the Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. 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 their implementation.

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

31. Effect of Con Edison Approval. The Contractor's obligations under the Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve the Contractor's work hereunder, including, but not limited to, 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 Contractor 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 the Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance, and shall not release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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32. Safeguards. The Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Contractor 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 the Contractor shall have been tested and meet all applicable ANSI standards and legal requirements, shall be of high quality and in good working order. The Contractor 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 the Contractor's work practices or conditions created by the Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. The Contractor 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 the site, a Con Edison employee (or an O&R employee where services were ordered for O&R) directs the Contractor to discontinue an operation because it may be unsafe or illegal, the Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. The Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

33. Maintenance of Work Site. The Contractor shall, at its own expense, store its apparatus, material, supplies and

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equipment in such orderly fashion as will not interfere with the progress of the performance of the services or the work of any other 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, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the services suspended until the condition is corrected and all costs associated therewith shall be borne by the Contractor.

34. Vehicle Spills. Contractor 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. 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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

35. Protection of Persons and Property; Notice of Accidents

A. When the Contractor performs services hereunder, the Contractor shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. The Contractor Blanket Purchase Agreement 4155748,

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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. The Contractor shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Con Edison's premises, 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. The Contractor 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, the Contractor 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 the Contractor 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 the Contractor.

D. When the Contractor or any permitted subcontractor performs services hereunder, its employees and consultants are required to have available a Contractor (or a subcontractor) or government-issued name and photo identification for review by Con Edison.

36. Communication with Supervisors. When work is performed outside of the Contractor's own premises, the Contractor must provide at all times an on-site representative with full authority to act for the Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for the Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, the Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by the Contractor in this role shall be subject to the continuing approval of Con Edison.

37. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by

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reference therein shall take precedence and govern. In the event that the Contractor's offer is referred to in the Blanket Purchase Agreement 4155748,

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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.

38. Waiver. Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of the Contractor's duties or obligations nor any failure of Con Edison to insist on strict performance by the Contractor of this Contract or to assert Con Edison's rights in any one or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of a breach hereof, shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

39. Relationship of Parties. The Contractor shall be an independent contractor in the performance of the services hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the parties, or joint employers of the Contractor's employees.

40. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and the Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

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

43. Title and Risk of Loss (Repair Services). If the Contract is, in whole or in part, for repair, maintenance or modification of equipment, the additional provisions in this Article 43 shall apply. Con Edison will retain title to equipment to be repaired or modified by the Contractor. Title to parts installed by the Contractor in Con Edison equipment, whether or not on Con Edison's premises, will pass to Con Edison upon installation. The risk of loss of or damage to the Con Edison equipment shall be borne by the Contractor from the time such equipment is turned over to the Contractor by Con Edison or, if it is to be delivered to the Contractor by others, from the time it is turned over to a carrier for shipment to the Contractor. The risk of loss or damage shall remain with the Contractor at all times thereafter until the equipment is returned and accepted by Con Edison at its premises if it has been removed or, if the services are being performed on Con Edison's premises, until the work has been completed, the Contractor

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so notifies Con Edison in writing and the equipment restored to Con Edison's care, custody and control.

44. Material Safety Data Sheets. The Contractor shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be contained in the goods to be furnished or used in the performance of services hereunder. For this purpose, a toxic substance is any that is listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete and return an MSDS promptly when requested to do so by Con Edison shall be grounds for cancellation of the Contract for default.

45. Submission to Jurisdiction/Choice of Forum

A. The Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. The Contractor agrees that service of process on the Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to the Contractor at the address shown in the Contract or at the address of any office actually maintained by the Contractor, or by actual personal delivery to the Contractor.

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Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.The Contractor consents to the selection of the state and the federal courts situated in the City of New York or in Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

46.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 16, 19, 20, 21, 28, 35, 46 and 49 are third party beneficiaries of the Contract and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

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

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

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

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### Special Conditions of Purchase - Indefinite Quantity Contract

#### SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT

##### 1. Nature of These Special Conditions

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Blanket Purchase Agreement 4155748,

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Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Con Edison has met its minimum purchase obligation as set forth below.

##### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

##### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

##### 5. Partial Deliveries

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The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

##### 6. Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

##### 7. Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

##### 8. Completion of Performance



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Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not

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result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Blanket Purchase Agreement 4155748,

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Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

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**SUBCONTRACTS FOR COMMERCIAL ITEMS**

Blanket Purchase Agreement 4155748,

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(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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**Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to Blanket Purchase Agreement 4155748,

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the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 12

CONTRACTOR: LEWIS TREE SERVICE INC

PURCHASE ORDER NO.: 4156042

BID COMPARISON:

\$ 7,325,788

\$ 7,501,278

\$26,444,876

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Blanket Purchase Agreement 4156042, 0  
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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**

Order **4156042**

Revision **0**

PO Approved Date **06/05/2013**

Revision Date

Current Buyer **David Blaut**

Supplier: **LEWIS TREE SERVICE INC**

**300 LUCIUS GORDON DR**

**WEST HENRIETTA, NY 14586**

**UNITED STATES**

Supplier

Contact:

**MARTIN SHANNON**

**(585) 295-2463**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**9139 Net 30**

Effective Start Date Effective End Date Amount Agreed (USD)

**06/01/2013 05/31/2016 6,700,000.00**

**Notes:** STATEN ISLAND TREE TRIMMING (VEGETATION MANAGEMENT) DISTRIBUTION

YEAR 1 - 6/1/13 - 5/31/14

YEAR 2 - 6/1/14 - 5/31/15

YEAR 3 - 6/1/15 - 5/31/16

Pricing will remain firm for the first year with escalation of 2.4% for the 2nd year and 4.8% for the 3rd year, respectively from year one pricing for unit pricing only

-----  
Perform vegetation management by trimming and/or removing trees which may interfere with the overhead electric distribution systems for Consolidated Edison Company of New York, Inc. (CECONY) in Staten Island.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER THIS BLANKET PURCHASE AGREEMENT IS \$6,700,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED

Blanket Purchase Agreement 4156042, 0

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**MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.**

This agreement will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison's invitation to RFQ# 36032 and all documents referenced therein.
- Con Edison's Clarifications/Addendum to bid event dated 10/10/12, 10/15/12, 10/24/12, 11/4/12.
- Con Edison's Standard Terms and Conditions of Service Contracts dated 7/1/12 as modified February 20, 2013 for Lewis Tree Service, Inc.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- Tree Trimming Requirements For Overhead Electric Distribution Lines Specification EO-10353 revision 7 dated 9/11/12
- VM-02-09 – Distribution VM Maintenance Unit Descriptions
- Lewis Tree Service, Inc. signed Disclosure Form dated 11/16/12
- Con Edison always reserves the right to not release crews
- Contract will include a storm unit price to provide accessible funding for small storm emergency events defined as a duration three or less days estimated at under \$500,000. Large storm emergency events will continue to be funded under separate agreements at the time of the event.

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Reference Documents: Purchasing Disclosure Form.pdf  
PRE AWARD DOCS.pdf  
ACCEPTANCE TO T&C EMAIL.msg  
CLARIFICATION 2.docx  
CLARIFICATION 3.docx  
CLARIFICATION 1.docx  
SPECS CECONY DISTRIBUTION.pdf  
Supplemental\_Construction\_Contract\_Requirements\_(SCCR)  
6-10-08 R1.pdf  
Con Edison 2010-2012 Distribution Unit Descriptions 9-22-09.doc  
CLARIFICATION 4.docx

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 NS1931305 HOUR 69.00  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 1  
2 NS1931306 HOUR 98.18  
SUPERVISOR - OVERTIME - PER HOUR - YEAR 1  
3 NS1931307 HOUR 123.70  
SUPERVISOR - PREMIUM TIME - PER HOUR - YEAR 1  
4 NS1931311 HOUR 64.33  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1  
5 NS1931312 HOUR 91.64  
SR.TRIMMER - OVERTIME - PER HOUR - YEAR 1  
6 NS1931313 HOUR 106.60

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

SR.TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1  
7 NS1931326 HOUR 107.47  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 1  
8 NS1931327 HOUR 151.38  
BOOMTRUCK OPERATOR & HELPER - OVERTIME - PER HOUR - YEAR 1  
9 NS1931328 HOUR 182.26  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME - PER HOUR - YEAR 1

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10 NS1931332 HOUR 38.62  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 1  
11 NS1931333 HOUR 53.35  
FLAG PERSON - OVERTIME - PER HOUR - YEAR 1  
12 NS1931334 HOUR 67.26  
FLAG PERSON - PREMIUM TIME - PER HOUR - YEAR 1  
13 NS1931335 HOUR 68.85  
CREW LEADER - STRAIGHT TIME - PER HOUR - YEAR 1  
14 NS1931336 HOUR 98.03  
CREW LEADER - OVERTIME - PER HOUR - YEAR 1  
15 NS1931337 HOUR 115.00  
CREW LEADER - PREMIUM TIME - PER HOUR - YEAR 1  
16 NS1931338 HOUR 56.71  
JOURNEYMAN TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1  
17 NS1931339 HOUR 81.07  
JOURNEYMAN TRIMMER - OVERTIME - PER HOUR - YEAR 1  
18 NS1931340 HOUR 97.39  
JOURNEYMAN TRIMMER - PREMIUM TIME - PER HOUR - YEAR 1  
19 NS1931341 HOUR 38.62  
GROUNDHAND - STRAIGHT TIME - PER HOUR - YEAR 1  
20 NS1931342 HOUR 53.35  
GROUNDHAND - OVERTIME - PER HOUR - YEAR 1  
21 NS1931343 HOUR 67.26  
GROUNDHAND - PREMIUM TIME - PER HOUR - YEAR 1  
22 NS1931344 HOUR 72.46  
GENERAL FOREMAN - STRAIGHT TIME - PER HOUR - YEAR 1  
23 NS1931345 HOUR 103.34  
GENERAL FOREMAN - OVERTIME - PER HOUR - YEAR 1  
24 NS1931346 HOUR 126.45  
GENERAL FOREMAN - PREMIUM TIME - PER HOUR - YEAR 1  
25 NS1931347 HOUR 47.00  
TRIMMER TRAINEE II - STRAIGHT TIME - PER HOUR - YEAR 1  
26 NS1931348 HOUR 66.70  
TRIMMER TRAINEE II - OVERTIME - PER HOUR - YEAR 1  
27 NS1931349 HOUR 82.60  
TRIMMER TRAINEE II - PREMIUM TIME - PER HOUR - YEAR 1  
28 NS1931350 HOUR 42.15  
TRIMMER TRAINEE I - STRAIGHT TIME - PER HOUR - YEAR 1  
29 NS1931351 HOUR 59.65  
TRIMMER TRAINEE I - OVERTIME (MON-SAT) - PER HOUR - YEAR 1  
30 NS1931352 HOUR 73.25  
TRIMMER TRAINEE I - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 1  
31 NS1931353 HOUR 56.71  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - STRAIGHT TIME -  
PER HOUR - YEAR 1  
32 NS1931354 HOUR 81.07  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - OVERTIME  
(MON-SAT) - PER HOUR - YEAR 1  
Blanket Purchase Agreement 4156042, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
33 NS1931355 HOUR 97.39  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - PREMIUM TIME  
(SUN/HOLIDAY) - PER HOUR - YEAR 1  
34 NS1931383 HOUR 26.16  
4WD BUCKET TRUCK - HOURLY - YEAR 1  
35 NS1931385 WEEK 1046.40

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4WD BUCKET TRUCK - WEEKLY - YEAR 1  
36 NS1931390 HOUR 15.95  
50'-55' BUCKET TRUCK - HOURLY - YEAR 1  
37 NS1931391 WEEK 638.00  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 1  
38 NS1931395 HOUR 19.29  
55'-60' BUCKET TRUCK - HOURLY - YEAR 1  
39 NS1931396 WEEK 771.60  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 1  
40 NS1931399 HOUR 21.92  
60'-65' BUCKET TRUCK - HOURLY - YEAR 1  
41 NS1931400 WEEK 876.80  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 1  
42 NS1931403 HOUR 30.25  
65'-70' BUCKET TRUCK - HOURLY - YEAR 1  
43 NS1931405 WEEK 1210.00  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 1  
44 NS1931424 HOUR 5.34  
DISC CHIPPER - HOURLY - YEAR 1  
45 NS1931426 WEEK 213.60  
DISC CHIPPER - WEEKLY - YEAR 1  
46 NS1931427 HOUR 3.74  
DRUM CHIPPER - HOURLY - YEAR 1  
47 NS1931428 WEEK 149.20  
DRUM CHIPPER - WEEKLY - YEAR 1  
48 NS1931437 HOUR 11.18  
SPLIT DUMP - HOURLY - YEAR 1  
49 NS1931438 WEEK 447.20  
SPLIT DUMP - WEEKLY - YEAR 1  
50 NS1931451 HOUR 11.18  
PICK UP TRUCK - HOURLY - YEAR 1  
51 NS1931452 WEEK 447.20  
PICK UP TRUCK - WEEKLY - YEAR 1  
52 NS1931455 HOUR 40.80  
LOG TRUCK - HOURLY - YEAR 1  
53 NS1931457 WEEK 1632.00  
LOG TRUCK - WEEKLY - YEAR 1  
54 NS1931462 HOUR 81.41  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 1  
55 NS1931464 WEEK 3256.40  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 1  
56 NS1931467 HOUR 206.80  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 1  
57 NS1931468 WEEK 8272.00  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 1  
58 NS1931473 HOUR 70.73  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 2  
59 NS1931474 HOUR 100.62  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
Blanket Purchase Agreement 4156042, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
60 NS1931475 HOUR 126.83  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
61 NS1931479 HOUR 65.90  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
62 NS1931480 HOUR 93.87



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SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
63 NS1931481 HOUR 109.80  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
64 NS1931494 HOUR 110.01  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 2  
65 NS1931495 HOUR 155.38  
BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
66 NS1931496 HOUR 187.27  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
67 NS1931500 HOUR 39.48  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 2  
68 NS1931501 HOUR 54.96  
FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
69 NS1931502 HOUR 68.82  
FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
70 NS1931503 HOUR 70.53  
CREW LEADER - STRAIGHT TIME - PER HOUR - YEAR 2  
71 NS1931504 HOUR 100.42  
CREW LEADER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
72 NS1931505 HOUR 118.45  
CREW LEADER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
73 NS1931506 HOUR 58.07  
JOURNEYMAN TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
74 NS1931507 HOUR 82.99  
JOURNEYMAN TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
75 NS1931508 HOUR 99.77  
JOURNEYMAN TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
76 NS1931509 HOUR 39.48  
GROUNDHAND - STRAIGHT TIME - PER HOUR - YEAR 2  
77 NS1931510 HOUR 54.96  
GROUNDHAND - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
78 NS1931511 HOUR 68.82  
GROUNDHAND - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
79 NS1931512 HOUR 74.32  
GENERAL FOREMAN - STRAIGHT TIME - PER HOUR - YEAR 2  
80 NS1931513 HOUR 105.97  
GENERAL FOREMAN - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
81 NS1931514 HOUR 130.25  
GENERAL FOREMAN - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
82 NS1931515 HOUR 48.43  
TRIMMER TRAINEE II - STRAIGHT TIME - PER HOUR - YEAR 2  
83 NS1931516 HOUR 68.70  
TRIMMER TRAINEE II - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
84 NS1931517 HOUR 83.97  
TRIMMER TRAINEE II - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
85 NS1931518 HOUR 43.30  
TRIMMER TRAINEE I - STRAIGHT TIME - PER HOUR - YEAR 2  
86 NS1931519 HOUR 61.40  
TRIMMER TRAINEE I - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
87 NS1931520 HOUR 75.30  
Blanket Purchase Agreement 4156042, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
TRIMMER TRAINEE I - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 2  
88 NS1931521 HOUR 58.07  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - STRAIGHT TIME -

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PER HOUR - YEAR 2

89 NS1931522 HOUR 82.99

NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - OVERTIME  
(MON-SAT) - PER HOUR - YEAR 2

90 NS1931523 HOUR 99.77

NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - PREMIUM TIME  
(SUN/HOLIDAY) - PER HOUR - YEAR 2

91 NS1931551 HOUR 26.42

4WD BUCKET TRUCK - HOURLY - YEAR 2

92 NS1931553 WEEK 1056.80

4WD BUCKET TRUCK - WEEKLY - YEAR 2

93 NS1931558 HOUR 16.27

50'-55' BUCKET TRUCK - HOURLY - YEAR 2

94 NS1931559 WEEK 650.80

50'-55' BUCKET TRUCK - WEEKLY - YEAR 2

95 NS1931563 HOUR 19.58

55'-60' BUCKET TRUCK - HOURLY - YEAR 2

96 NS1931564 WEEK 783.20

55'-60' BUCKET TRUCK - WEEKLY - YEAR 2

97 NS1931567 HOUR 22.25

60'-65' BUCKET TRUCK - HOURLY - YEAR 2

98 NS1931568 WEEK 890.00

60'-65' BUCKET TRUCK - WEEKLY - YEAR 2

99 NS1931571 HOUR 30.70

65'-70' BUCKET TRUCK - HOURLY - YEAR 2

100 NS1931573 WEEK 1228.00

65'-70' BUCKET TRUCK - WEEKLY - YEAR 2

101 NS1931592 HOUR 5.42

DISC CHIPPER - HOURLY - YEAR 2

102 NS1931594 WEEK 216.80

DISC CHIPPER - WEEKLY - YEAR 2

103 NS1931595 HOUR 3.81

DRUM CHIPPER - HOURLY - YEAR 2

104 NS1931596 WEEK 152.40

DRUM CHIPPER - WEEKLY - YEAR 2

105 NS1931605 HOUR 11.35

SPLIT DUMP - HOURLY - YEAR 2

106 NS1931606 WEEK 454.00

SPLIT DUMP - WEEKLY - YEAR 2

107 NS1931619 HOUR 11.35

PICK UP TRUCK - HOURLY - YEAR 2

108 NS1931620 WEEK 454.00

PICK UP TRUCK - WEEKLY - YEAR 2

109 NS1931623 HOUR 41.41

LOG TRUCK - HOURLY - YEAR 2

110 NS1931625 WEEK 1656.40

LOG TRUCK - WEEKLY - YEAR 2

111 NS1931630 HOUR 83.03

GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 2

112 NS1931632 WEEK 3321.20

GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 2

113 NS1931635 HOUR 221.28

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100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 2

114 NS1931636 WEEK 8851.20

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100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 2  
115 NS1931641 HOUR 72.56  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 3  
116 NS1931642 HOUR 103.16  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
117 NS1931643 HOUR 130.09  
SUPERVISOR - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
118 NS1931647 HOUR 67.51  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
119 NS1931648 HOUR 96.15  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
120 NS1931649 HOUR 113.10  
SR.TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
121 NS1931662 HOUR 112.41  
BOOMTRUCK OPERATOR & HELPER - STRAIGHT TIME - PER HOUR - YEAR 3  
122 NS1931663 HOUR 159.46  
BOOMTRUCK OPERATOR & HELPER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
123 NS1931664 HOUR 192.44  
BOOMTRUCK OPERATOR & HELPER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
124 NS1931668 HOUR 40.15  
FLAG PERSON - STRAIGHT TIME - PER HOUR - YEAR 3  
125 NS1931669 HOUR 56.60  
FLAG PERSON - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
126 NS1931670 HOUR 70.44  
FLAG PERSON - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
127 NS1931671 HOUR 72.26  
CREW LEADER - STRAIGHT TIME - PER HOUR - YEAR 3  
128 NS1931672 HOUR 102.86  
CREW LEADER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
129 NS1931673 HOUR 122.00  
CREW LEADER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
130 NS1931674 HOUR 59.46  
JOURNEYMAN TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
131 NS1931675 HOUR 84.97  
JOURNEYMAN TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
132 NS1931676 HOUR 102.24  
JOURNEYMAN TRIMMER - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
133 NS1931677 HOUR 40.15  
GROUNDHAND - STRAIGHT TIME - PER HOUR - YEAR 3  
134 NS1931678 HOUR 56.60  
GROUNDHAND - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
135 NS1931679 HOUR 70.44  
GROUNDHAND - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
136 NS1931680 HOUR 76.21  
GENERAL FOREMAN - STRAIGHT TIME - PER HOUR - YEAR 3  
137 NS1931681 HOUR 108.65  
GENERAL FOREMAN - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
138 NS1931682 HOUR 134.19  
GENERAL FOREMAN - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
139 NS1931683 HOUR 49.88  
TRIMMER TRAINEE II - STRAIGHT TIME - PER HOUR - YEAR 3  
140 NS1931684 HOUR 70.75  
TRIMMER TRAINEE II - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
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141 NS1931685 HOUR 85.54  
TRIMMER TRAINEE II - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
142 NS1931686 HOUR 44.72  
TRIMMER TRAINEE I - STRAIGHT TIME - PER HOUR - YEAR 3  
143 NS1931687 HOUR 63.25  
TRIMMER TRAINEE I - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
144 NS1931688 HOUR 77.33  
TRIMMER TRAINEE I - PREMIUM TIME (SUN/HOLIDAY) - PER HOUR - YEAR 3  
145 NS1931689 HOUR 59.46  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - STRAIGHT TIME -  
PER HOUR - YEAR 3  
146 NS1931690 HOUR 84.97  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - OVERTIME  
(MON-SAT) - PER HOUR - YEAR 3  
147 NS1931691 HOUR 102.24  
NOTIFICATION/CONTACT FORESTER (JOURNEYMEN TRIMMER RATE) - PREMIUM TIME  
(SUN/HOLIDAY) - PER HOUR - YEAR 3  
148 NS1931719 HOUR 26.68  
4WD BUCKET TRUCK - HOURLY - YEAR 3  
149 NS1931721 WEEK 1067.20  
4WD BUCKET TRUCK - WEEKLY - YEAR 3  
150 NS1931726 HOUR 16.59  
50'-55' BUCKET TRUCK - HOURLY - YEAR 3  
151 NS1931727 WEEK 663.60  
50'-55' BUCKET TRUCK - WEEKLY - YEAR 3  
152 NS1931731 HOUR 19.87  
55'-60' BUCKET TRUCK - HOURLY - YEAR 3  
153 NS1931732 WEEK 794.80  
55'-60' BUCKET TRUCK - WEEKLY - YEAR 3  
154 NS1931735 HOUR 22.58  
60'-65' BUCKET TRUCK - HOURLY - YEAR 3  
155 NS1931736 WEEK 903.22  
60'-65' BUCKET TRUCK - WEEKLY - YEAR 3  
156 NS1931739 HOUR 31.16  
65'-70' BUCKET TRUCK - HOURLY - YEAR 3  
157 NS1931741 WEEK 1246.40  
65'-70' BUCKET TRUCK - WEEKLY - YEAR 3  
158 NS1931760 HOUR 5.50  
DISC CHIPPER - HOURLY - YEAR 3  
159 NS1931762 WEEK 220.00  
DISC CHIPPER - WEEKLY - YEAR 3  
160 NS1931763 HOUR 3.90  
DRUM CHIPPER - HOURLY - YEAR 3  
161 NS1931765 WEEK 156.00  
DRUM CHIPPER - WEEKLY - YEAR 3  
162 NS1931774 HOUR 11.52  
SPLIT DUMP - HOURLY - YEAR 3  
163 NS1931775 WEEK 460.80  
SPLIT DUMP - WEEKLY - YEAR 3  
164 NS1931788 HOUR 11.52  
PICK UP TRUCK - HOURLY - YEAR 3  
165 NS1931789 WEEK 460.80  
PICK UP TRUCK - WEEKLY - YEAR 3  
166 NS1931792 HOUR 42.03  
LOG TRUCK - HOURLY - YEAR 3  
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167 NS1931794 WEEK 1681.20  
LOG TRUCK - WEEKLY - YEAR 3  
168 NS1931799 HOUR 84.69  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 3  
169 NS1931801 WEEK 3387.60  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 3  
170 NS1931804 HOUR 236.76  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 3  
171 NS1931805 WEEK 9470.40  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 3  
172 NS1931812 MILE 5018.25  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (CON ED STATEN ISLAND) - PER MILE -  
YEAR 1  
173 NS1931813 MILE 18795.00  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (SI RAILROAD) - PER MILE - YEAR 1  
174 NS1931830 EACH 97.50  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
175 NS1931831 EACH 103.86  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
176 NS1931832 EACH 121.42  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
177 NS1931833 EACH 164.00  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
178 NS1931834 EACH 208.78  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
179 NS1931835 EACH 263.89  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
180 NS1931836 EACH 239.76  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
181 NS1931837 EACH 355.03  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
182 NS1931838 EACH 445.32  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
183 NS1931839 EACH 398.48  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
184 NS1931840 EACH 647.00  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
185 NS1931841 EACH 822.40  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
186 NS1931842 EACH 585.00  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
187 NS1931843 EACH 987.79  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
188 NS1931844 EACH 1243.15  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
189 NS1931845 EACH 1107.49  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
190 NS1931846 EACH 1708.40  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
191 NS1931847 EACH 1835.57  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
192 NS1931848 EACH 85.32  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
193 NS1931849 EACH 101.17  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
194 NS1931850 EACH 106.99  
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TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
195 NS1931851 EACH 157.74  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
196 NS1931852 EACH 193.32  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
197 NS1931853 EACH 256.89  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
198 NS1931854 EACH 223.18  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
199 NS1931855 EACH 312.00  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
200 NS1931856 EACH 394.61  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
201 NS1931857 EACH 342.70  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
202 NS1931858 EACH 550.00  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
203 NS1931859 EACH 801.40  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
204 NS1931860 EACH 468.00  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
205 NS1931861 EACH 833.30  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
206 NS1931862 EACH 1211.40  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
207 NS1931863 EACH 829.48  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
208 NS1931864 EACH 1320.00  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
209 NS1931865 EACH 1788.75  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
210 NS1931866 EACH 80.00  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR  
1  
211 NS1931867 EACH 268.13  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 1  
212 NS1931868 EACH 355.03  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 1  
213 NS1931869 EACH 30.00  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 1  
214 NS1931870 EACH 49.45  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 1  
215 NS1931871 EACH 66.62  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 1  
216 NS1931872 EACH 82.95  
CUT VINES AND TREAT - PER LOCATION - YEAR 1  
217 NS1931880 EACH 222.44  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 1  
218 NS1931881 EACH 289.73  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 1  
219 NS1931883 HOUR 147.01  
2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1  
220 NS1931886 HOUR 153.06  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.

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TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1

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221 NS1931889 HOUR 189.75

3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1

222 NS1931892 HOUR 195.80

3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR.  
TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 1

223 NS1931901 HOUR 173.56

2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 1

224 NS1931903 HOUR 270.00

2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 1

225 NS1931910 MILE 5138.69

DISTRIBUTION VM MAINTENANCE - 6X6X10 (CONED STATEN ISLAND) - PER MILE - YEAR  
2

226 NS1931911 MILE 19246.08

DISTRIBUTION VM MAINTENANCE - 6X6X10 (SI RAILROAD) - PER MILE - YEAR 2

227 NS1931928 EACH 99.84

REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

228 NS1931929 EACH 106.35

REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

229 NS1931930 EACH 124.33

REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

230 NS1931931 EACH 167.94

REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

231 NS1931932 EACH 213.79

REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

232 NS1931933 EACH 270.22

REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

233 NS1931934 EACH 245.51

REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

234 NS1931935 EACH 363.55

REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

235 NS1931936 EACH 456.01

REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

236 NS1931937 EACH 408.04

REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

237 NS1931938 EACH 662.53

REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

238 NS1931939 EACH 842.14

REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

239 NS1931940 EACH 599.04

REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

240 NS1931941 EACH 1011.50

REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

241 NS1931942 EACH 1272.99

REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

242 NS1931943 EACH 1134.07

REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

243 NS1931944 EACH 1749.40

REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

244 NS1931945 EACH 1879.62

REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

245 NS1931946 EACH 87.37

TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

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246 NS1931947 EACH 103.60  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
247 NS1931948 EACH 109.56  
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TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
248 NS1931949 EACH 161.53  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
249 NS1931950 EACH 197.96  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
250 NS1931951 EACH 263.06  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
251 NS1931952 EACH 228.54  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
252 NS1931953 EACH 319.49  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
253 NS1931954 EACH 404.08  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
254 NS1931955 EACH 350.92  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
255 NS1931956 EACH 563.20  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
256 NS1931957 EACH 820.63  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
257 NS1931958 EACH 479.23  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
258 NS1931959 EACH 853.30  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
259 NS1931960 EACH 1240.47  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
260 NS1931961 EACH 849.39  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
261 NS1931962 EACH 1351.68  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
262 NS1931963 EACH 1831.68  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
263 NS1931964 EACH 81.92  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR  
2  
264 NS1931965 EACH 274.57  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 2  
265 NS1931966 EACH 363.55  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 2  
266 NS1931967 EACH 30.72  
STUMP TREAT - STUMP UNDER 12" IN DIAMETER - PER STUMP - YEAR 2  
267 NS1931968 EACH 50.64  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 2  
268 NS1931969 EACH 68.22  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 2  
269 NS1931970 EACH 84.94  
CUT VINES AND TREAT - PER LOCATION - YEAR 2  
270 NS1931978 EACH 227.78  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 2  
271 NS1931979 EACH 296.68  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 2  
272 NS1931981 HOUR 150.54



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2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
273 NS1931984 HOUR 156.73  
2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
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274 NS1931987 HOUR 194.30  
3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
275 NS1931990 HOUR 200.50  
3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 2  
276 NS1931999 HOUR 177.73  
2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 2  
277 NS1932001 HOUR 276.48  
2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 2  
278 NS1932008 MILE 5259.13  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (CONED STATEN ISLAND) - PER MILE - YEAR 3  
279 NS1932009 MILE 19697.16  
DISTRIBUTION VM MAINTENANCE - 6X6X10 (SI RAIOLROAD) - PER MILE - YEAR 3  
280 NS1932026 EACH 102.18  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
281 NS1932027 EACH 108.85  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
282 NS1932028 EACH 127.25  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
283 NS1932029 EACH 171.87  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
284 NS1932030 EACH 218.80  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
285 NS1932031 EACH 276.56  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
286 NS1932032 EACH 251.27  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
287 NS1932033 EACH 372.07  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
288 NS1932034 EACH 466.70  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
289 NS1932035 EACH 417.61  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
290 NS1932036 EACH 678.06  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
291 NS1932037 EACH 861.88  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
292 NS1932038 EACH 613.08  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
293 NS1932039 EACH 1035.20  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
294 NS1932040 EACH 1302.82  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
295 NS1932041 EACH 1160.65  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
296 NS1932042 EACH 1790.40  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

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297 NS1932043 EACH 1923.68  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
298 NS1932044 EACH 89.42  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
299 NS1932045 EACH 106.03  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
300 NS1932046 EACH 112.13  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
301 NS1932047 EACH 165.31  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
302 NS1932048 EACH 202.60  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
303 NS1932049 EACH 269.22  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
304 NS1932050 EACH 233.89  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
305 NS1932051 EACH 326.98  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
306 NS1932052 EACH 413.55  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
307 NS1932053 EACH 359.15  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
308 NS1932054 EACH 576.40  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
309 NS1932055 EACH 839.87  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
310 NS1932056 EACH 490.46  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
311 NS1932057 EACH 873.30  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
312 NS1932058 EACH 1269.55  
TOPPINGS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
313 NS1932059 EACH 869.30  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
314 NS1932060 EACH 1383.36  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
315 NS1932061 EACH 1874.61  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
316 NS1932062 EACH 83.84  
BLUECARD INVESTIGATION AND/OR COMPLETION BY INVESTIGATOR - PER JOB - YEAR  
3  
317 NS1932063 EACH 281.00  
BLUECARD COMPLETION BY 2-MAN CREW & 55' BUCKET - PER JOB - YEAR 3  
318 NS1932064 EACH 372.07  
BLUECARD COMPLETION BY 2-MAN CREW & 65'-70' BUCKET - PER JOB - YEAR 3  
319 NS1932065 EACH 31.44  
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320 NS1932066 EACH 51.82  
STUMP TREAT - STUMP 12.1" TO 20" IN DIAMETER - PER STUMP - YEAR 3  
321 NS1932067 EACH 69.82  
STUMP TREAT - STUMP 20.1" AND OVER IN DIAMETER - PER STUMP - YEAR 3  
322 NS1932068 EACH 86.93  
CUT VINES AND TREAT - PER LOCATION - YEAR 3  
323 NS1932076 EACH 233.12

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GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 3

324 NS1932077 EACH 303.64

GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 3

325 NS1932079 HOUR 154.07

2-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

326 NS1932082 HOUR 160.41

2-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

327 NS1932085 HOUR 198.86

3-MAN CREW WITH 55' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 55 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

328 NS1932088 HOUR 205.20

3-MAN CREW WITH 65'-70' BUCKET TRUCK, CHIPPER, & EQUIPMENT (FOREMAN + JR. TRIMMER+ GROUND TRAINEE + 70 BUCKET + DISC CHIPPER) - HOURLY - YEAR 3

329 NS1932097 HOUR 181.89

2-MAN CREW WITH LOG TRUCK - HOURLY - YEAR 3

330 NS1932099 HOUR 282.96

2-MAN CREW WITH 125' AERIAL CRANE - HOURLY - YEAR 3

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**Terms and Conditions**

**Standard Terms**

**NEGOTIATED CON EDISON SERVICES TERMS AND CONDITIONS 2.20.13 LEWIS**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**SERVICE CONTRACTS**

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July 1, 2012

As modified February 20, 2013 for Lewis Tree Service, Inc.

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### **STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS**

1.Definitions. The following terms as used herein shall have the meanings stated:  
"Con Edison"-Consolidated Edison Company of New York, Inc., the entity entering into the Contract  
and  
issuing any purchase orders applicable to the Contract, for services  
to be performed for Con Edison or its affiliate, Orange and

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Rockland Utilities, Inc. ("O&R").

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

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"Contract"-The contract between Con Edison and the Contractor consisting of (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or the 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 the Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or,

if the Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the

Contract or another writing manifesting acceptance of the Contractor's offer; provided, however, if the Contractor's

offer contains terms additional to or different from those or 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 the Contractor of the Contract in the Procurement System or, if the Contractor is

not enabled in the Procurement System, by the signing by the Contractor of the Contract or a copy of the Contract or

such other writing as may be issued by Con Edison (or another document expressing the Contractor's acceptance

thereof), or the Contractor's commencement or continuation of the services ordered under the Contract following its

receipt of the Contract or such other writing, such performance signifying the Contractor's acceptance of the terms

thereof.

3.Amendments. No revision or 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 the Contractor within thirty

(30) days after receipt and processing of proper invoices with required supporting documentation.

B.Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department, after the rendering of

the services for which payment is to be made, in such detail and with such supporting documentation as 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

reimbursable supplies and materials. If the Contract provides for services to be rendered on an hourly-rate basis, invoices shall include the number of hours worked and the hourly

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rate for each person performing services as well as the total amount invoiced, and shall be accompanied by signed time sheets and any other data or supporting documentation reasonably required by Con Edison.

C.Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays

in the progress of the services.

D.The acceptance by the Contractor of final payment, except for any express written reservation of rights, shall be

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

E.Con Edison at any time may, after notifying the Contractor in writing, pay directly any unpaid claims against the

Contractor based on services rendered hereunder, and in so doing Con Edison shall be conclusively deemed to be acting as the Contractor's agent. Any payment made by Con Edison to discharge a claim against the Contractor shall be treated as a payment made under the Contract from Con Edison to the Contractor.

### 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 services furnished hereunder, and Con Edison agrees to pay or reimburse the Contractor 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 Contractor for any interest, penalties or expenses the Contractor 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 the Contractor shall cooperate and assist Con Edison therewith.

B.Payroll Taxes and Contributions. The Contractor assumes exclusive liability for and shall pay all contributions or

taxes imposed by or required under the unemployment insurance laws of the state of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the services to be performed.

7.Time of Performance. The Contractor shall perform the services to be furnished in accordance with any schedule

of performance stated herein. It is understood and agreed by the Contractor that TIME IS OF THE ESSENCE OF

THE CONTRACT and of each and every portion thereof for which a certain length of time or a completion date is

fixed for performance. Receipt and acceptance by Con Edison of revised schedules from the Contractor during the

performance of the services shall not be deemed a waiver of the contract completion date.

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8.Excusable Delay. The Contractor 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 the Contractor, a strike not caused or prolonged by an unfair labor practice of

the Contractor, public disorder or riot, a failure of public transportation facilities, inability of Con Edison to provide

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access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in

breach of an express obligation under the Contract. Delay in the Contractor'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 the Contractor from another source. The Contractor 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 Contractor'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

the Contractor's performance hereunder at any time. The Contractor 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, the Contractor 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 the Contractor establishes to the satisfaction

of Con Edison were incurred by the Contractor solely by reason of the suspension, provided, however, that such

entitlement is conditioned upon the Contractor's notifying Con Edison in writing within fifteen (15) days of the

suspension that additional costs will or may be incurred thereby and upon the Contractor'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 Contractor to

receive any additional costs.

10. Warranties. The Contractor warrants that services furnished hereunder shall be rendered competently by

qualified personnel and in accordance with the best accepted practice. The Contractor also warrants that services

furnished hereunder shall meet any and all tests and conform strictly to all specifications and comply strictly with all

performance requirements contained in the Contract. The Contractor further warrants any goods furnished hereunder

in connection with such services to be new and free from defects in title, design, material, fabrication and

workmanship, to conform strictly to any applicable samples and to specifications, drawings and other descriptions

herein, and to be suitable for the purpose intended. Should any failure to meet any of the warranties stated herein

appear within eighteen (18) months of the completion of all services rendered hereunder, the Contractor shall upon

notice by Con Edison reperform the services and replace or repair any goods not conforming to the foregoing

warranties promptly and without expense to Con Edison. In the event of failure of the Contractor promptly to

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remedy as aforesaid any breach of warranty Con Edison may correct the deficiencies and charge the Contractor the cost thereof. The aforesaid warranties shall survive acceptance of and payment for the services furnished hereunder.

After any such services have been redone and materials or articles replaced or repaired pursuant to the foregoing warranties, they shall be subject anew to the foregoing warranties. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

11.Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any

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specifications, drawings or data incorporated herein. Any such changes shall be directed in writing (electronically or in print form). 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 Contractor for adjustment under this Article shall be deemed waived unless asserted in writing within thirty (30)

days from the date of the direction to make the change. In the event any such adjustment is not agreed upon

promptly, the Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so

by Con Edison, without prejudice to its right to 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 Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If the Contractor 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 the Contractor without recourse to Con Edison.

C.For time and material work, Contractor 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 Article 10 (Warranties) above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs, including, 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 the Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract work 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.



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B. For each claim for Non-Contract Work, as defined in A(i) of this Article, the Contractor must give written notice to Con Edison's designated representative within 5 days of when the Contractor 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, the Contractor must give written notice to Con Edison's designated representative within five (5) days of Contractor'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 Contractor 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 Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, the Contractor 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 in 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 the Contractor's bid for the performance of the work that had its cost

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increased, the actual cost to the Contractor to perform such work, and the amount of the Increased Costs for which the Contractor claims Con Edison is responsible; 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. Contractor'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 Contractor that neither the Contractor 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 the Contractor 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 the Contractor or its

subcontractors whenever Con Edison believes that this is necessary to assure it that the services hereunder are being

performed and will be performed in full accordance with the requirement of the Contract and on

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schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to the premises at which services hereunder are being performed 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 services rendered 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 a deficiency in the Contractor's performance or that it was not in accordance with the Contract requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by Con Edison or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish goods and services fully in accordance with the requirements of the Contract. Any articles or equipment serviced or repaired hereunder shall be subject to inspection and testing by Con Edison after completion of the services (and after delivery to Con Edison, if it has been removed from Con Edison's premises), and final payment for repaired articles or equipment shall not be due before acceptance of the articles or equipment after testing. Payment prior to testing shall not constitute acceptance.

### **15. Personnel.**

A. Personnel assigned to perform services hereunder who are specifically designated personnel in the Contract shall devote substantially all their working time to performing work under the Contract, unless there is an express provision to the contrary in the Contract, and shall not be removed from such assignments without the prior written consent of Con Edison. Con Edison shall have the right to approve replacements for such designated personnel. Contractor shall remove any personnel from performing services under the Contract as may be requested by Con Edison.

B. The Contractor and its permitted subcontractors shall not employ any Con Edison or O&R employee to

perform any services hereunder without the prior written permission of Con Edison. Further, neither Contractor nor any of its subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the Blanket Purchase Agreement 4156042,

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subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order."

### **16. Subcontracting.**

A. The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved

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

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, NY 10003

Attention:Purchasing Department

Section Manager,

Technology and Strategic Initiatives

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17.Assignment. The Contractor 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, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly

and severally liable with the assignee for all of the Contractor's obligations under the Contract.

18.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 the Contractor or its subcontractors in connection with the Contract shall, except to the extent indicated

in writing by Con Edison (or O&R with respect to services ordered for O&R), 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 upon completion of such performance. The Contractor shall not use Con Edison's or O&R's name, or

otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding its

services 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. The Contractor acknowledges that its violation of the

provisions of this Article may result in irreparable harm to Con Edison and O&R, the amount of which would be

difficult to ascertain and which would not be adequately compensated for by monetary damages.

Accordingly, the

Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms

of this Article, in addition to their remedies at law.

19.Infringement. If the Contractor, 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

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documentation)  
covered by a patent, copyright, trademark or other proprietary right, the Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use under the Contract by securing a suitable agreement from the owner of such right. The Contractor 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 out of or related to a claim against an Indemnified Party that the services rendered hereunder, or any goods, designs, processes or works of authorship (including computer programs and documentation) supplied in connection therewith or resulting therefrom, infringe any patent, copyright, trademark or any other proprietary right. The Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded against an Indemnified Party. Con Edison shall notify the Contractor of any such claim, suit or proceeding in writing and give the Contractor authority, information and assistance (at the Contractor's expense) for the defense thereof. In the event that the use of any goods, designs, processes or works of authorship furnished hereunder is enjoined, the Contractor shall promptly, at its own expense, either (a) procure for Con Edison (or O&R, with respect to services performed for O&R) the right to continue using such goods, designs, processes or works of authorship or (b) with the approval of Con Edison, (i) replace them with noninfringing goods, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

20. Indemnification. To the fullest extent allowed by law, the Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns 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 the Contractor or any subcontractor, or any of their agents, servants, representatives or employees, or non-parties to the Contract under Blanket Purchase Agreement 4156042,

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their direction or control. The Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against the Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor

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hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against the Contractor.

21. Insurance. The Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract), at its own expense, 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 any part of the services involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Contractor shall be for not less than \$7,500,000 per occurrence for bodily injury or death or property damage or a combined single limit of not less than \$7,500,000 per occurrence.) There shall be no policy deductibles without 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 services furnished hereunder and completed operations. There shall be no exclusion for claims by Contractor's employees against Con Edison or O&R based on injury to Contractor's or any subcontractor's employees.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the

Contractor or any Subcontractors, with a combined single limit of not less than \$1,000,000 per Blanket Purchase Agreement 4156042,

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accident for bodily injury or death and property damage.

D. Where the work involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired

aircraft including helicopters, used by the Contractor or any subcontractors, 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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Contractor shall require the subcontractor to name Contractor, 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.

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F. In the event the services include any architectural, 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 services to be furnished under the Contract.

The Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10)

days' prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of

coverage. 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 work at Con Edison's premises the Contractor shall furnish Con Edison

with copies of the policies specified in paragraphs B and E above 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 services and completed operations. Con Edison shall have the right, upon request, to require the

Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D

and F of this Article.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto,

Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor, 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 the Contractor's contractual

obligations hereunder.

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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)

22. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by

written notice to the Contractor terminate the Contract, in whole or in part, without liability to the Contractor except

as stated in this Article. In the event of such termination, in full discharge of its obligations to the Contractor in

respect of the Contract and such termination, Con Edison shall pay the Contractor for services performed prior to

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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 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 the Contractor of any obligation which may arise out of services performed prior to termination. In no event shall Con Edison be liable to the Contractor for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales.

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

24. Ownership of Documents and Materials; Ownership of Intangible Property.

A. With respect to all documents and materials, including, but not limited to, drawings, plans, Blanket Purchase Agreement 4156042,

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specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with services ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire,

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Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

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

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Blanket Purchase Agreement 4156042,

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Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and



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Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

25. Con Edison Performance. Con Edison shall perform any action required of it by this Contract in order to enable

the Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not

give rise to an action by the Contractor for damages, in contract or in tort, or entitle the Contractor to cancel or

rescind the Contract or abandon its performance. Unexcused nonperformance by Con Edison shall, however, relieve

the Contractor of its obligation to perform hereunder to the extent it prevents the Contractor from performing.

Nonperformance by Con Edison shall be excused where caused by an act or omission of the Contractor.

26. Compliance with Laws. The Contractor shall comply with all federal, state, and local laws, executive orders,

regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder.

The Contractor shall provide Con Edison, upon request, with the original or a copy of permits, certificates, receipts

and other evidence establishing its compliance with this Article. Without limiting the generality of the foregoing,

the Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained

in Appendix A hereto, which are 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 contractors to the

federal government.

27. Set-Off. Con Edison shall have the right to set off against any sums due the Contractor under the Contract any

claims Con Edison may have against the Contractor under the Contract or any other contract between Con Edison

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and the Contractor without prejudice to the rights of the parties in respect of such claims.

28. Investigation and Audit. Contractor 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 services furnished under the Contract, and the Contractor 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 22 (Termination for

Convenience) of these Standard Terms and Conditions, the Contractor 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

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governmental agency or authority (and their respective authorized representatives during the term of the Contract

and for a period of six (6) years after final payment under the Contract. If an investigation, audit, or inquiry

discloses that Con Edison has paid the Contractor for any costs which were not in fact incurred or for any time spent

or materials used which were not in fact spent or used, or for any other costs that were improperly charged, the

Contractor shall refund to Con Edison an amount equal to such payment.

### **29. Required Approvals**

A. The Contractor will not be permitted to perform any field service work, including but not limited to installation, maintenance, and repair, until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

B. Where required by the Contract, the Contractor shall submit designated documents, such as drawings and

process procedures, for review and approval by Con Edison. 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 their implementation.

30. Quality Assurance. To further assure compliance with warranties stated herein, the Contractor shall meet the

quality assurance requirements stated in the Contract, to the extent any quality assurance requirements are set forth

or incorporated herein.

31. Effect of Con Edison Approval. The Contractor's obligations under the Contract shall not be affected by the

grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve the Contractor's

work hereunder, including, but not limited to, 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

Contractor 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 the Contractor to comply

with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a

waiver of such requirements or as an acceptance of the non-compliance, and shall not release Contractor from full

responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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32. Safeguards. The Contractor shall strictly observe safety requirements of applicable federal, state and municipal

laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Contractor

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 the Contractor shall

have been tested and meet all applicable ANSI standards and legal requirements, shall be of high quality and in good

working order. The Contractor 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 the Contractor's work practices or conditions created by

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the Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. The Contractor 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 the site, a Con Edison employee (or an O&R

employee where services were ordered for O&R) directs the Contractor to discontinue an operation because it may

be unsafe or illegal, the Contractor shall immediately halt the questioned operation and, if the Contractor disagrees

with the employee, shall contact Con Edison's authorized representative for instructions. The Contractor shall

obtain the employee's name and employee identification number and report this information to Con Edison's

authorized representative.

33. Maintenance of Work Site. The Contractor shall, at its own expense, store its apparatus, material, supplies and

equipment in such orderly fashion as will not interfere with the progress of the performance of the services or the

work of any other 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, Contractor has

failed to comply with any provisions of this Article, Con Edison may order any or all of the services suspended until

the condition is corrected and all costs associated therewith shall be borne by the Contractor.

34. Vehicle Spills. Contractor 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. 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. Contractor shall be required to

reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

35. Protection of Persons and Property; Notice of Accidents

A. When the Contractor performs services hereunder, the Contractor shall at all times exercise every reasonable

precaution to protect persons and property and any items on which it is working. The Contractor Blanket Purchase Agreement 4156042,

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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. The Contractor shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Con Edison's premises, 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. The Contractor shall promptly report in writing to Con Edison all accidents whatsoever, and any claims made in

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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, the Contractor 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 the Contractor 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 the Contractor.

D.When the Contractor or any permitted subcontractor performs services hereunder, its employees and consultants are required to have available a Contractor (or a subcontractor) or government-issued name and photo identification for review by Con Edison.

36.Communication with Supervisors. When work is performed outside of the Contractor's own premises, the

Contractor must provide at all times an on-site representative with full authority to act for the Contractor. The

representative must be able to read, write, and thoroughly understand both English and any other languages spoken

by persons performing work for the Contractor and must be able to effectively communicate with those persons in

their own language or languages. In addition, the Contractor's representative must ensure that labeling, log book

entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and

correctly. The continuation of the individual selected by the Contractor in this role shall be subject to the continuing

approval of Con Edison.

37.Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other

documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase

order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the

BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In

any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase

order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and

govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent

provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or

inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by

reference therein shall take precedence and govern. In the event that the Contractor's offer is referred to in the

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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

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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.

38. Waiver. Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order

or certificate issued under the Contract nor any performance by Con Edison of any of the Contractor's duties or

obligations nor any failure of Con Edison to insist on strict performance by the Contractor of this Contract or to

assert Con Edison's rights in any one or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part,

because of a breach hereof, shall be deemed a waiver of any money damages to which Con Edison may be entitled

because of such breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized

representative, and only with respect to the particular event to which it specifically refers.

39. Relationship of Parties. The Contractor shall be an independent contractor in the performance of the services

hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the

parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the

parties, or joint employers of the Contractor's employees.

40. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 (Amendments) of these

Standard Terms and Conditions, contains the entire agreement between Con Edison and the Contractor with respect

to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder

of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or

agreements relating to the subject matter of the Contract are merged herein.

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. Contractor hereby waives trial by jury in any action, proceeding or counterclaim

brought by either party against the other on all matters whatsoever arising out of or in any way connected with the

Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the

Contract.

43. Title and Risk of Loss (Repair Services). If the Contract is, in whole or in part, for repair, maintenance or

modification of equipment, the additional provisions in this Article 43 shall apply. Con Edison will retain title to

equipment to be repaired or modified by the Contractor. Title to parts installed by the Contractor in Con Edison

equipment, whether or not on Con Edison's premises, will pass to Con Edison upon installation. The risk of loss of

or damage to the Con Edison equipment shall be borne by the Contractor from the time such equipment is turned

over to the Contractor by Con Edison or, if it is to be delivered to the Contractor by others, from the time it is turned

over to a carrier for shipment to the Contractor. The risk of loss or damage shall remain with the Contractor at all

times thereafter until the equipment is returned and accepted by Con Edison at its premises if it has been

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removed

or, if the services are being performed on Con Edison's premises, until the work has been completed, the Contractor

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so notifies Con Edison in writing and the equipment restored to Con Edison's care, custody and control.

44. Material Safety Data Sheets. The Contractor shall complete and submit a Material Safety Data Sheet (MSDS)

indicating any toxic substances that may be contained in the goods to be furnished or used in the performance of

services hereunder. For this purpose, a toxic substance is any that is listed in the latest edition of the National

Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete

and return an MSDS promptly when requested to do so by Con Edison shall be grounds for cancellation of the

Contract for default.

45. Submission to Jurisdiction/Choice of Forum

A. The Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of

New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. The Contractor agrees that service of process on the Contractor in

relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to the Contractor at the address shown in the Contract or at the address of any office actually maintained by the Contractor, or by actual personal delivery to the Contractor.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. The Contractor consents to the selection of the state and the federal courts situated in the City of New York or in

Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

46. 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 16, 19, 20, 21, 28, 35, 46 and 49 are third party

beneficiaries of the Contract and may enforce those Articles and any other articles in which the affiliates or

non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

47. Service Organization Control SSAE 16 SOC 1 Report. If Contractor performs services for Con Edison pursuant

to the Contract that Con Edison determines have an impact on the financial reporting controls of Con Edison or fall

within the purview of Con Edison's Sarbanes-Oxley compliance efforts, then: (i) Contractor shall provide Con

Edison with a copy of the latest SSAE 16 SOC 1 ("SOC 1") Report concerning Contractor's operations, systems,

controls and procedures prior to commencing performance under the Contract; and (ii) during the term of the

Contract, Contractor shall be obligated to have a new SOC 1 performed and to furnish a new SOC 1 Report

concerning such new audit to Con Edison no later than twelve (12) months after the date of the SOC 1 Report that

was previously furnished to Con Edison. Contractor will provide Con Edison with a bridge letter covering any

period of time between the date of the last SOC 1 Report furnished to Con Edison and termination of the Contract.

## **Contains Confidential Commercial Information**

All SOC 1 Reports shall reference the applicable Con Edison Contract purchase order number and shall be sent to:

Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, NY 10003, Attention: Auditing

Department.

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48.Enablement in the Procurement System. In the event Contractor is not presently enabled in the Procurement

System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes

receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor agrees to

promptly become enabled in the Procurement System.

49.Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither

employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a

payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or

others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees,

agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or

O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special

consideration or treatment and whether or not the employee is involved in the services to be performed under the

Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation,

procurement, or performance of any contract between Con Edison and the Contractor or any services or work

performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents,

warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in

default under the Contract and all other purchase orders and contracts between Con Edison and Contractor and (a)

Con Edison may, in its sole discretion, cancel for default the Contract and any other purchase order or contract

between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con

Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other

contract between Con Edison and Contractor (including, but not limited to, the right to payments for services

performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such

contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by,

Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external

attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have

## **Contains Confidential Commercial Information**

violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such purchase orders or contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 347568

### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### 1. Nature of These Special Conditions

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the

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Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of

the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time

Con Edison has met its minimum purchase obligation as set forth below.

##### 2. Maximum and Minimum Quantities

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller")

shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall

make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at

least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt,

such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.)

If

no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the

applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not

ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant

to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### 3. Orders for Goods or Services

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific

quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a



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purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

### 4. Terms and Conditions

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

### 5. Partial Deliveries

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The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise

specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire

quantity is delivered.

### 6. Shipping Notices

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each

shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### 7. Expenditure Limitation

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together

with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract

has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform

Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### 8. Completion of Performance

Any purchase order issued under the Contract during the term of the Contract and not completed within that term,

shall be completed by Seller within the time specified in such purchase order, and the rights and obligations

of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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## Appendix A

### APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

### APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

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As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply

with the following clauses and make the following certifications. Where clauses or certifications require the

Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as

if they were set forth herein in full text. Some general guidance as to the applicability of clauses or

## **Contains Confidential Commercial Information**

certifications

incorporating such referenced provisions may be provided below. However, the referenced provisions, together

with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To

the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section

52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the

substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)"

except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition

Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to

incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract

which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been

debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason

to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to

furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor

shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and

again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the

Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to

the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not

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result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and

regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns

(MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of

title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small

Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business

Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in

Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal

Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the

contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled

"Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities

and shall comply with the requirements for record keeping and reporting to the Federal Government (including the

submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of

Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal

Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section

52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and

conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to

the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the

Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that

any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and

60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of

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Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal

Regulations, which

implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities

(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of

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title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled

"Certification of Toxic

Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition

Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to

comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section

52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and

that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations,

which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN**

#### **FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition

Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment

of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such

certification and to the completion and submission of any documentation that may be required by such certification,

and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

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(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items

(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the

Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the

clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal

Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "

Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal

Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP

2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title

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48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of

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Purchasing or to  
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the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).  
337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 13

CONTRACTOR: LEWIS TREE SERVICE INC

PURCHASE ORDER NO.: 4156125

BID COMPARISON:

\$ 6,890,690

\$ 7,947,463

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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**

Order **4156125**

Revision **2**

PO Approved Date **06/06/2013**

Revision Date **06/03/2013**

Current Buyer **David Blaut**

Supplier: **LEWIS TREE SERVICE INC**

**300 LUCIUS GORDON DR**  
**WEST HENRIETTA, NY 14586**

**UNITED STATES**

Supplier

Contact:

**MARTIN SHANNON**

**(585) 295-2463**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**9139 Net 30 N/A**

Effective Start Date Effective End Date Amount Agreed (USD)

**06/01/2013 05/31/2016 5,600,000.00**

**Notes:** CECONY (ROW) TREE TRIMMING (VEGETATION MANAGEMENT) TRANSMISSION

YEAR 1 - 6/1/13 - 5/31/14

YEAR 2 - 6/1/14 - 5/31/15

YEAR 3 - 6/1/15 - 5/31/16

Pricing will remain firm for the first year with escalation of 3.5% for the 2nd year and 6.84% for the 3rd year, respectively from year one pricing for unti pricing only

-----  
Perform vegetation management by trimming and/or removing trees which may interfere with the overhead electric transmission systems for Consolidated Edison Company of New York, Inc. (CECONY).

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER THIS BLANKET PURCHASE AGREEMENT IS \$5,600,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED

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MODIFICATION TO THIS BLANKET PURCHASE AGREEMENT.

This agreement will be performed in accordance with the following which are incorporated herein by reference:



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- Con Edison's invitation to RFQ# 36032 and all documents referenced therein.
- Con Edison's Clarifications/Addendum to bid event dated 10/10/12, 10/15/12, 10/24/12, 11/4/12.
- Con Edison's Standard Terms and Conditions of Service Contracts dated 7/1/12 as modified February 20, 2013 for Lewis Tree Service, Inc.
- Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08
- CE 2013-2015 Transmission Unit Descriptions
- TLM 601 Vegetation Management on Overhead Transmission Line ROW 2013 through 2015 Revision 3 dated August 2012
- CE-SS-4401 Vegetation Treatment Along Overhead Transmission Line Rights-Of-Way Revision 09 Dated September, 2011
- Lewis Tree Service, Inc. signed Disclosure Form dated 11/16/12
- Con Edison always reserves the right to not release crews
- Contract will include a storm unit price to provide accessible funding for small storm emergency events defined as a duration three or less days estimated at under \$500,000. Large storm emergency events will continue to be funded under separate agreements at the time of the event.

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REVISION 2 - ADDED 24 LINES (LINES 283-306) THAT WERE IN THE BID BUT DID NOT UPLOAD INTO THE BPA. NO OTHER CHANGES MADE TO BPA.

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REVISION 1 - INTERNAL CHANGE MADE TO BPA. NO OTHER CHANGES MADE TO BPA.

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR)

- 6-10-08 R1.pdf
- TLM-601 R3 FINAL dated August 2012.pdf
- CE 2013-2015 Transmission Unit Descriptions.doc
- Purchasing Disclosure Form.pdf
- PRE AWARD DOCS.pdf
- ACCEPTANCE TO T&C EMAIL.msg
- CLARIFICATION 1.docx
- CLARIFICATION 4.docx
- CLARIFICATION 3.docx
- CLARIFICATION 2.docx
- CE-SS-4401 R9 Dated September, 2011.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

1 NS1931305 HOUR 59.93  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 1

2 NS1931306 HOUR 84.15

Blanket Purchase Agreement 4156125, 2

Proprietary and Confidential Page 3 of 44

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

SUPERVISOR - OVERTIME - PER HOUR - YEAR 1

3 NS1931308 HOUR 59.91

LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 1

4 NS1931309 HOUR 83.83

LEADER (FOREMAN) - OVERTIME - PER HOUR - YEAR 1

5 NS1931311 HOUR 53.44

SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1

6 NS1931312 HOUR 74.72

SR.TRIMMER - OVERTIME - PER HOUR - YEAR 1

7 NS1931314 HOUR 47.87

JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 1

8 NS1931315 HOUR 67.20

**Contains Confidential Commercial Information**

JR. TRIMMER - OVERTIME - PER HOUR - YEAR 1  
9 NS1931320 HOUR 41.27  
TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 1  
10 NS1931321 HOUR 59.04  
TRAINEE - OVERTIME - PER HOUR - YEAR 1  
11 NS1931383 HOUR 24.11  
4WD BUCKET TRUCK - HOURLY - YEAR 1  
12 NS1931385 WEEK 964.40  
4WD BUCKET TRUCK - WEEKLY - YEAR 1  
13 NS1931388 HOUR 15.95  
50' BUCKET TRUCK - HOURLY - YEAR 1  
14 NS1931389 WEEK 638.00  
50' BUCKET TRUCK - WEEKLY - YEAR 1  
15 NS1931392 HOUR 19.29  
55' BUCKET TRUCK - HOURLY - YEAR 1  
16 NS1931393 Daily 771.60  
55' BUCKET TRUCK - DAILY - YEAR 1  
17 NS1931397 HOUR 24.11  
60' BUCKET TRUCK - HOURLY - YEAR 1  
18 NS1931398 WEEK 964.40  
60' BUCKET TRUCK - WEEKLY - YEAR 1  
19 NS1931401 HOUR 33.27  
65'+ BUCKET TRUCK - HOURLY - YEAR 1  
20 NS1931402 WEEK 1330.80  
65'+ BUCKET TRUCK - WEEKLY - YEAR 1  
21 NS1931406 HOUR 37.90  
SKIDDER BUCKET - HOURLY - YEAR 1  
22 NS1931407 WEEK 1516.00  
SKIDDER BUCKET - WEEKLY - YEAR 1  
23 NS1931422 HOUR 53.56  
SKY TRIMMER - HOURLY - YEAR 1  
24 NS1931423 WEEK 2142.40  
SKY TRIMMER - WEEKLY - YEAR 1  
25 NS1931424 HOUR 5.34  
DISC CHIPPER - HOURLY - YEAR 1  
26 NS1931426 WEEK 213.60  
DISC CHIPPER - WEEKLY - YEAR 1  
27 NS1931427 HOUR 3.73  
DRUM CHIPPER - HOURLY - YEAR 1  
28 NS1931428 WEEK 149.20  
DRUM CHIPPER - WEEKLY - YEAR 1  
29 NS1931429 HOUR 29.40  
DISC CHIPPER 18" OR GREATER - HOURLY - YEAR 1  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 4 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
30 NS1931430 WEEK 1176.00  
DISC CHIPPER 18" OR GREATER - WEEKLY - YEAR 1  
31 NS1931431 HOUR 22.29  
4X4 TRUCK W/ HYDRAULIC SPRAY TANK - 200 GALLON MINIMUM - HOURLY - YEAR 1  
32 NS1931432 WEEK 891.60  
4X4 TRUCK W/ HYDRAULIC SPRAY TANK - 200 GALLON MINIMUM - WEEKLY - YEAR 1  
33 NS1931433 HOUR 7.80  
ATV - WEEKLY - YEAR 1  
34 NS1931434 WEEK 312.00  
ATV - HOURLY - YEAR 1  
35 NS1931435 HOUR 6.74

**Contains Confidential Commercial Information**

ATV - BASED HERBICIDE APPLICATOR - HOURLY - YEAR 1  
36 NS1931436 WEEK 269.60  
ATV - BASED HERBICIDE APPLICATOR - WEEKLY - YEAR 1  
37 NS1931437 HOUR 10.65  
SPLIT DUMP - HOURLY - YEAR 1  
38 NS1931438 WEEK 426.00  
SPLIT DUMP - WEEKLY - YEAR 1  
39 NS1931451 HOUR 10.65  
PICK UP TRUCK - HOURLY - YEAR 1  
40 NS1931452 WEEK 426.00  
PICK UP TRUCK - WEEKLY - YEAR 1  
41 NS1931453 HOUR 24.36  
FLAT BED EQUIPMENT HAULER - HOURLY - YEAR 1  
42 NS1931454 WEEK 974.40  
FLAT BED EQUIPMENT HAULER - WEEKLY - YEAR 1  
43 NS1931455 HOUR 40.80  
LOG TRUCK - HOURLY - YEAR 1  
44 NS1931456 Daily 1632.00  
LOG TRUCK - DAILY - YEAR 1  
45 NS1931458 HOUR 52.37  
SKID STEER MOWER - HOURLY - YEAR 1  
46 NS1931459 WEEK 2094.80  
SKID STEER MOWER - WEEKLY - YEAR 1  
47 NS1931460 HOUR 97.59  
MOWER/HYDROAXE W/ FECON HEAD (OR SIMILAR) - HOURLY - YEAR 1  
48 NS1931461 WEEK 3903.56  
MOWER/HYDROAXE W/ FECON HEAD (OR SIMILAR) - WEEKLY - YEAR 1  
49 NS1931462 HOUR 81.41  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 1  
50 NS1931464 WEEK 3256.40  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 1  
51 NS1931467 HOUR 197.40  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 1  
52 NS1931468 WEEK 7896.00  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 1  
53 NS1931473 HOUR 60.35  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 2  
54 NS1931474 HOUR 85.10  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
55 NS1931476 HOUR 62.25  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 2  
56 NS1931477 HOUR 87.02  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
57 NS1931479 HOUR 55.50  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 5 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
58 NS1931480 HOUR 77.51  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
59 NS1931482 HOUR 49.59  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 2  
60 NS1931483 HOUR 69.58  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
61 NS1931488 HOUR 42.74  
TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 2  
62 NS1931489 HOUR 61.11

**Contains Confidential Commercial Information**

TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 2  
63 NS1931551 HOUR 24.47  
4WD BUCKET TRUCK - HOURLY - YEAR 2  
64 NS1931553 WEEK 978.80  
4WD BUCKET TRUCK - WEEKLY - YEAR 2  
65 NS1931556 HOUR 16.27  
50' BUCKET TRUCK - HOURLY - YEAR 2  
66 NS1931557 WEEK 650.80  
50' BUCKET TRUCK - WEEKLY - YEAR 2  
67 NS1931560 HOUR 19.58  
55' BUCKET TRUCK - HOURLY - YEAR 2  
68 NS1931562 WEEK 783.20  
55' BUCKET TRUCK - WEEK - YEAR 2  
69 NS1931565 HOUR 24.47  
60' BUCKET TRUCK - HOURLY - YEAR 2  
70 NS1931566 WEEK 978.80  
60' BUCKET TRUCK - WEEKLY - YEAR 2  
71 NS1931569 HOUR 33.76  
65'+ BUCKET TRUCK - HOURLY - YEAR 2  
72 NS1931570 WEEK 1350.40  
65'+ BUCKET TRUCK - WEEKLY - YEAR 2  
73 NS1931574 HOUR 39.79  
SKIDDER BUCKET -HOURLY - YEAR 2  
74 NS1931575 WEEK 1591.60  
SKIDDER BUCKET - WEEKLY - YEAR 2  
75 NS1931590 HOUR 56.23  
SKY TRIMMER - HOURLY - YEAR 2  
76 NS1931591 WEEK 2249.20  
SKY TRIMMER - WEEKLY - YEAR 2  
77 NS1931592 HOUR 5.42  
DISC CHIPPER - HOURLY - YEAR 2  
78 NS1931594 WEEK 216.80  
DISC CHIPPER - WEEKLY - YEAR 2  
79 NS1931595 HOUR 3.81  
DRUM CHIPPER - HOURLY - YEAR 2  
80 NS1931596 WEEK 152.40  
DRUM CHIPPER - WEEKLY - YEAR 2  
81 NS1931597 HOUR 29.84  
DISC CHIPPER 18" OR GREATER - HOURLY - YEAR 2  
82 NS1931598 WEEK 1193.60  
DISC CHIPPER 18" OR GREATER - WEEKLY - YEAR 2  
83 NS1931599 HOUR 22.62  
4X4 TRUCK W/ HYDRAULIC SPRAY TANK - 200 GALLON MINIMUM - HOURLY - YEAR 2  
84 NS1931600 WEEK 904.80  
4X4 TRUCK W/ HYDRAULIC SPRAY TANK - 200 GALLON MINIIMUM - WEEKLY - YEAR 2  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 6 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
85 NS1931601 HOUR 7.88  
ATV - WEEKLY - YEAR 2  
86 NS1931602 WEEK 315.20  
ATV - HOURLY - YEAR 2  
87 NS1931603 HOUR 6.84  
ATV - BASED HERBICIDE APPLICATOR - HOURLY - YEAR 2  
88 NS1931604 WEEK 273.60  
ATV - BASED HERBICIDE APPLICATOR - WEEKLY - YEAR 2  
89 NS1931605 HOUR 10.81

**Contains Confidential Commercial Information**

SPLIT DUMP - HOURLY - YEAR 2  
90 NS1931606 WEEK 432.40  
SPLIT DUMP - WEEKLY - YEAR 2  
91 NS1931619 HOUR 10.86  
PICK UP TRUCK - HOURLY - YEAR 2  
92 NS1931620 WEEK 434.40  
PICK UP TRUCK - WEEKLY - YEAR 2  
93 NS1931621 HOUR 24.72  
FLAT BED EQUIPMENT HAULER - HOURLY - YEAR 2  
94 NS1931622 WEEK 988.80  
FLAT BED EQUIPMENT HAULER - WEEKLY - YEAR 2  
95 NS1931623 HOUR 41.41  
LOG TRUCK - HOURLY - YEAR 2  
96 NS1931625 WEEK 1656.40  
LOG TRUCK - WEEKLY - YEAR 2  
97 NS1931626 HOUR 53.15  
SKID STEER MOWER - HOURLY - YEAR 2  
98 NS1931627 WEEK 2126.00  
SKID STEER MOWER - WEEKLY - YEAR 2  
99 NS1931628 HOUR 99.05  
MOWER/HYDROAXE W/ FECON HEAD (OR SIMILAR) - HOURLY - YEAR 2  
100 NS1931629 WEEK 3962.00  
MOWER/HYDROAXE W/ FECON HEAD (OR SIMILAR) - WEEKLY - YEAR 2  
101 NS1931630 HOUR 83.03  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 2  
102 NS1931632 WEEK 3321.20  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 2  
103 NS1931635 HOUR 211.22  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 2  
104 NS1931636 WEEK 8448.80  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 2  
105 NS1931641 HOUR 62.62  
SUPERVISOR - STRAIGHT TIME - PER HOUR - YEAR 3  
106 NS1931642 HOUR 87.96  
SUPERVISOR - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
107 NS1931644 HOUR 64.52  
LEADER (FOREMAN) - STRAIGHT TIME - PER HOUR - YEAR 3  
108 NS1931645 HOUR 90.08  
LEADER (FOREMAN) - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
109 NS1931647 HOUR 57.49  
SR.TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
110 NS1931648 HOUR 80.19  
SR.TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
111 NS1931650 HOUR 51.24  
JR. TRIMMER - STRAIGHT TIME - PER HOUR - YEAR 3  
112 NS1931651 HOUR 71.84  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 7 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
JR. TRIMMER - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
113 NS1931656 HOUR 44.13  
TRAINEE - STRAIGHT TIME - PER HOUR - YEAR 3  
114 NS1931657 HOUR 63.04  
TRAINEE - OVERTIME (MON-SAT) - PER HOUR - YEAR 3  
115 NS1931719 HOUR 24.83  
4WD BUCKET TRUCK - HOURLY - YEAR 3  
116 NS1931720 Daily 993.20

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4WD BUCKET TRUCK - DAILY - YEAR 3  
117 NS1931724 HOUR 16.59  
50' BUCKET TRUCK - HOURLY - YEAR 3  
118 NS1931725 WEEK 663.60  
50' BUCKET TRUCK - WEEKLY - YEAR 3  
119 NS1931728 HOUR 19.87  
55' BUCKET TRUCK - HOURLY - YEAR 3  
120 NS1931730 WEEK 794.80  
55' BUCKET TRUCK - WEEKLY - YEAR 3  
121 NS1931733 HOUR 24.83  
60' BUCKET TRUCK - HOURLY - YEAR 3  
122 NS1931734 WEEK 993.20  
60' BUCKET TRUCK - WEEKLY - YEAR 3  
123 NS1931737 HOUR 34.26  
65'+ BUCKET TRUCK - HOURLY - YEAR 3  
124 NS1931738 WEEK 1370.00  
65'+ BUCKET TRUCK - WEEKLY - YEAR 3  
125 NS1931742 HOUR 41.78  
SKIDDER BUCKET -HOURLY - YEAR 3  
126 NS1931743 WEEK 1671.20  
SKIDDER BUCKET - WEEKLY - YEAR 3  
127 NS1931758 HOUR 59.04  
SKY TRIMMER - HOURLY - YEAR 3  
128 NS1931759 WEEK 2361.60  
SKY TRIMMER - WEEKLY - YEAR 3  
129 NS1931760 HOUR 5.50  
DISC CHIPPER - HOURLY - YEAR 3  
130 NS1931762 WEEK 220.00  
DISC CHIPPER - WEEKLY - YEAR 3  
131 NS1931763 HOUR 3.90  
DRUM CHIPPER - HOURLY - YEAR 3  
132 NS1931765 WEEK 156.00  
DRUM CHIPPER - WEEKLY - YEAR 3  
133 NS1931766 HOUR 30.28  
DISC CHIPPER 18" OR GREATER - HOURLY - YEAR 3  
134 NS1931767 WEEK 1211.20  
DISC CHIPPER 18" OR GREATER - WEEKLY - YEAR 3  
135 NS1931768 HOUR 22.96  
4X4 TRUCK W/ HYDRAULIC SPRAY TANK - 200 GALLON MINIMUM - HOURLY - YEAR 3  
136 NS1931769 WEEK 918.40  
4X4 TRUCK W/ HYDRAULIC SPRAY TANK - 200 GALLON MINIMUM - WEEKLY - YEAR 3  
137 NS1931770 HOUR 7.95  
ATV - WEEKLY - YEAR 3  
138 NS1931771 WEEK 318.00  
ATV - HOURLY - YEAR 3  
139 NS1931772 HOUR 6.94  
ATV - BASED HERBICIDE APPLICATOR - HOURLY - YEAR 3  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 8 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
140 NS1931773 WEEK 277.60  
ATV - BASED HERBICIDE APPLICATOR - WEEKLY - YEAR 3  
141 NS1931774 HOUR 10.97  
SPLIT DUMP - HOURLY - YEAR 3  
142 NS1931775 WEEK 438.80  
SPLIT DUMP - WEEKLY - YEAR 3  
143 NS1931788 HOUR 11.08

**Contains Confidential Commercial Information**

PICK UP TRUCK - HOURLY - YEAR 3  
144 NS1931789 WEEK 443.20  
PICK UP TRUCK - WEEKLY - YEAR 3  
145 NS1931790 HOUR 25.09  
FLAT BED EQUIPMENT HAULER - HOURLY - YEAR 3  
146 NS1931791 WEEK 1003.60  
FLAT BED EQUIPMENT HAULER - WEEKLY - YEAR 3  
147 NS1931792 HOUR 42.03  
LOG TRUCK - HOURLY - YEAR 3  
148 NS1931794 WEEK 1681.20  
LOG TRUCK - WEEKLY - YEAR 3  
149 NS1931795 HOUR 53.94  
SKID STEER MOWER - HOURLY - YEAR 3  
150 NS1931796 WEEK 2157.60  
SKID STEER MOWER - WEEKLY - YEAR 3  
151 NS1931797 HOUR 100.54  
MOWER/HYDROAXE W/ FECON HEAD (OR SIMILAR) - HOURLY - YEAR 3  
152 NS1931798 WEEK 4021.60  
MOWER/HYDROAXE W/ FECON HEAD (OR SIMILAR) - WEEKLY - YEAR 3  
153 NS1931799 HOUR 84.69  
GRAPPLE/TRACK CHIPPER - HOURLY - YEAR 3  
154 NS1931801 WEEK 3387.62  
GRAPPLE/TRACK CHIPPER - WEEKLY - YEAR 3  
155 NS1931804 HOUR 228.09  
100' CRANE (INCLUDES OPERATOR) - HOURLY - YEAR 3  
156 NS1931805 WEEK 9123.60  
100' CRANE (INCLUDES OPERATOR) - WEEKLY - YEAR 3  
157 NS1931822 EACH 890.60  
TRANSMISSION MOWING (INC. HAND CUTTING WHERE REQD.) - PER ACRE - YEAR 1  
158 NS1931823 FOOT 5.07  
TRANSMISSION SIDE-TRIMMING - PER FOOT - YEAR 1  
159 NS1931826 SQUARE  
FOOT  
.50  
MANUAL BRUSH REMOVAL (<6" DBH) - PER SQ FOOT - YEAR 1  
160 NS1931827 SQUARE  
FOOT  
.54  
MANUAL BRUSH REMOVAL (<6" DBH) WITH STUMP TREATMENT APPLIED - PER SQ FOOT -  
YEAR 1  
161 NS1931828 EACH 38.00  
REMOVALS <6" AND >10' TALL - PER TREE - YEAR 1  
162 NS1931829 EACH 47.00  
REMOVALS <6" AND >10' TALL - CHIP OR REMOVE ALL DEBRIS - PER TREE - YEAR 1  
163 NS1931830 EACH 95.00  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
164 NS1931839 EACH 385.48  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
165 NS1931840 EACH 585.33  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 9 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
166 NS1931841 EACH 822.40  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
167 NS1931842 EACH 542.00  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1

**Contains Confidential Commercial Information**

168 NS1931843 EACH 887.25  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
169 NS1931844 EACH 1200.00  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
170 NS1931845 EACH 1165.78  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
171 NS1931846 EACH 1200.00  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
172 NS1931847 EACH 1835.57  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
173 NS1931848 EACH 80.00  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
174 NS1931849 EACH 101.17  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
175 NS1931850 EACH 106.99  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
176 NS1931851 EACH 91.37  
TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
177 NS1931852 EACH 162.71  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
178 NS1931853 EACH 255.69  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
179 NS1931854 EACH 180.25  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
180 NS1931855 EACH 259.41  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
181 NS1931856 EACH 394.61  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
182 NS1931857 EACH 327.70  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
183 NS1931858 EACH 486.68  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
184 NS1931859 EACH 721.26  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
185 NS1931860 EACH 369.75  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
186 NS1931861 EACH 500.00  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
187 NS1931863 EACH 691.23  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 1  
188 NS1931864 EACH 1049.00  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1  
189 NS1931865 EACH 1650.00  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 1  
190 NS1931873 EACH 375.00  
PRE-EMERGENT BARE GROUND APPLICATIONS - PER ACRE - YEAR 1  
191 NS1931874 EACH 210.00  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - LOW DENSITY - PER ACRE - YEAR 1  
192 NS1931875 EACH 324.50  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - MEDIUM DENSITY - PER ACRE - YEAR  
1  
Blanket Purchase Agreement 4156125, 2  
Proprietary and Confidential Page 10 of 44  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
193 NS1931876 EACH 588.52  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - HIGH DENSITY - PER ACRE - YEAR 1  
194 NS1931877 EACH 40.00



**Contains Confidential Commercial Information**

STUMP TREATMENT > 12" DIAMETER - PER STUMP - PER STUMP - YEAR 1  
195 NS1931878 EACH 18.11  
STUMP TREATMENT < 12" DIAMETER - PER STUMP - PER STUMP - YEAR 1  
196 NS1931879 EACH 405.00  
ATV THINVERT HERBICIED APPLICATIONS - PER ACRE - YEAR 1  
197 NS1931880 EACH 197.44  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 1  
198 NS1931881 EACH 231.78  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 1  
199 NS1931920 EACH 921.77  
TRANSMISSION MOWING (INC. HAND CUTTING WHERE REQD.) - PER ACRE - YEAR 2  
200 NS1931921 FOOT 5.24  
TRANSMISSION SIDE-TRIMMING - PER FOOT - YEAR 2  
201 NS1931924 SQUARE  
FOOT  
.51  
MANUAL BRUSH REMOVAL (<6" DBH) - PER SQ FOOT - YEAR 2  
202 NS1931925 SQUARE  
FOOT  
.55  
MANUAL BRUSH REMOVAL (<6" DBH) WITH STUMP TREATMENT APPLIED - PER SQ FOOT -  
YEAR 2  
203 NS1931926 EACH 39.33  
REMOVALS <6" AND >10' TALL - PER TREE - PER TREE - YEAR 2  
204 NS1931927 EACH 48.64  
REMOVALS <6" AND >10' TALL - CHIP OR REMOVE ALL DEBRIS - PER TREE - PER TREE -  
YEAR 2  
205 NS1931928 EACH 98.32  
REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
206 NS1931937 EACH 398.97  
REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
207 NS1931938 EACH 605.81  
REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
208 NS1931939 EACH 851.18  
REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
209 NS1931940 EACH 560.97  
REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
210 NS1931941 EACH 918.30  
REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
211 NS1931942 EACH 1242.00  
REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
212 NS1931943 EACH 1206.58  
REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
213 NS1931944 EACH 1242.00  
REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
214 NS1931945 EACH 1899.81  
REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
215 NS1931946 EACH 82.80  
TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
216 NS1931947 EACH 104.71  
TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
217 NS1931948 EACH 110.73  
TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
218 NS1931949 EACH 94.56

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

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TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
219 NS1931950 EACH 168.40  
TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
220 NS1931951 EACH 264.63  
TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
221 NS1931952 EACH 186.55  
TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
222 NS1931953 EACH 268.48  
TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
223 NS1931954 EACH 408.42  
TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
224 NS1931955 EACH 339.16  
TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
225 NS1931956 EACH 503.71  
TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
226 NS1931957 EACH 746.50  
TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
227 NS1931958 EACH 382.69  
TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
228 NS1931959 EACH 517.50  
TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
229 NS1931961 EACH 715.42  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 2  
230 NS1931962 EACH 1085.71  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2  
231 NS1931963 EACH 1707.75  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
232 NS1931971 EACH 388.12  
PRE-EMERGENT BARE GROUND APPLICATIONS - PER ACRE - YEAR 2  
233 NS1931972 EACH 217.35  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - LOW DENSITY - PER ACRE - YEAR 2  
234 NS1931973 EACH 335.85  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - MEDIUM DENSITY - PER ACRE - YEAR  
2  
235 NS1931974 EACH 609.11  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - HIGH DENSITY - PER ACRE - YEAR 2  
236 NS1931975 EACH 41.40  
STUMP TREATMENT > 12" DIAMETER - PER STUMP - YEAR 2  
237 NS1931976 EACH 18.74  
STUMP TREATMENT < 12" DIAMETER - PER STUMP - YEAR 2  
238 NS1931977 EACH 419.17  
ATV THINVERT HERBICIDED APPLICATIONS - PER ACRE - YEAR 2  
239 NS1931978 EACH 204.35  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 2  
240 NS1931979 EACH 239.89  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 2  
241 NS1932018 EACH 951.51  
TRANSMISSION MOWING (INC. HAND CUTTING WHERE REQD.) - PER ACRE - YEAR 3  
242 NS1932019 FOOT 5.41  
TRANSMISSION SIDE-TRIMMING - PER FOOT - YEAR 3  
243 NS1932022 SQUARE  
FOOT  
.53  
MANUAL BRUSH REMOVAL (<6" DBH) - PER SQ FOOT - YEAR 3  
244 NS1932023 SQUARE  
FOOT  
.57

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(USD)

MANUAL BRUSH REMOVAL (<6" DBH) WITH STUMP TREATMENT APPLIED - PER SQ FOOT - YEAR 3

245 NS1932024 EACH 40.59

REMOVALS <6" AND >10' TALL - PER TREE - PER TREE - YEAR 3

246 NS1932025 EACH 50.21

REMOVALS <6" AND >10' TALL - CHIP OR REMOVE ALL DEBRIS - PER TREE - PER TREE - YEAR 3

247 NS1932026 EACH 101.49

REMOVALS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

248 NS1932035 EACH 411.84

REMOVALS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

249 NS1932036 EACH 625.36

REMOVALS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

250 NS1932037 EACH 878.65

REMOVALS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

251 NS1932038 EACH 579.07

REMOVALS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

252 NS1932039 EACH 947.93

REMOVALS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

253 NS1932040 EACH 1282.08

REMOVALS 30.1" TO 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

254 NS1932041 EACH 1245.51

REMOVALS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

255 NS1932042 EACH 1282.08

REMOVALS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

256 NS1932043 EACH 1961.12

REMOVALS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

257 NS1932044 EACH 85.47

TOPPINGS 6.1" TO 12" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

258 NS1932045 EACH 108.09

TOPPINGS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

259 NS1932046 EACH 114.30

TOPPINGS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

260 NS1932047 EACH 97.61

TOPPINGS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

261 NS1932048 EACH 173.83

TOPPINGS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

262 NS1932049 EACH 273.17

TOPPINGS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

263 NS1932050 EACH 192.57

TOPPINGS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

264 NS1932051 EACH 277.15

TOPPINGS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

265 NS1932052 EACH 421.60

TOPPINGS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

266 NS1932053 EACH 350.11

TOPPINGS 24.1" TO 30" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

267 NS1932054 EACH 519.96

TOPPINGS 24.1" TO 30" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

268 NS1932055 EACH 770.59

TOPPINGS 24.1" TO 30" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

269 NS1932056 EACH 395.04

TOPPINGS 30.1" TO 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

270 NS1932057 EACH 534.20

TOPPINGS 30.1" TO 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

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271 NS1932059 EACH 738.51  
TOPPINGS OVER 36" - LEAVE ALL DEBRIS - PER TREE - YEAR 3

272 NS1932060 EACH 1120.75  
TOPPINGS OVER 36" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3

273 NS1932061 EACH 1762.86  
TOPPINGS OVER 36" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

274 NS1932069 EACH 400.65  
PRE-EMERGENT BARE GROUND APPLICATIONS - PER ACRE - YEAR 3

275 NS1932070 EACH 224.36  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - LOW DENSITY - PER ACRE - YEAR 3

276 NS1932071 EACH 346.69  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - MEDIUM DENSITY - PER ACRE - YEAR  
3

277 NS1932072 EACH 628.77  
TRANSMISSION LOW VOLUME FOLIAR HERBICIDE - HIGH DENSITY - PER ACRE - YEAR 3

278 NS1932073 EACH 42.73  
STUMP TREATMENT > 12" DIAMETER - PER STUMP - YEAR 3

279 NS1932074 EACH 19.34  
STUMP TREATMENT < 12" DIAMETER - PER STUMP - YEAR 3

280 NS1932075 EACH 432.70  
ATV THINVERT HERBICIED APPLICATIONS - PER ACRE - YEAR 3

281 NS1932076 EACH 210.94  
GRIND STUMP 6" BELOW GRADE - 18" AND UNDER IN DIAMETER - PER STUMP - YEAR 3

282 NS1932077 EACH 247.63  
GRIND STUMP 6" BELOW GRADE - OVER 18" IN DIAMETER - PER STUMP - YEAR 3

283 NS1931831 EACH 103.86  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1

284 NS1931832 EACH 110.22  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 1

285 NS1931833 EACH 187.58  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 1

286 NS1931834 EACH 206.78  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1

287 NS1931835 EACH 263.89  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 1

288 NS1931836 EACH 218.00  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 1

289 NS1931837 EACH 337.00  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 1

290 NS1931838 EACH 404.84  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 1

291 NS1931929 EACH 107.50  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

292 NS1931930 EACH 114.08  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

293 NS1931931 EACH 194.15  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

294 NS1931932 EACH 214.02  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

295 NS1931933 EACH 273.13  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 2

296 NS1931934 EACH 225.63  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 2

297 NS1931935 EACH 348.80  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 2

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
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Amount  
(USD)

298 NS1931936 EACH 419.01  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 2  
299 NS1932027 EACH 110.96  
REMOVALS 6.1" TO 12" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
300 NS1932028 EACH 117.76  
REMOVALS 6.1" TO 12" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
301 NS1932029 EACH 200.41  
REMOVALS 12.1" TO 19" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
302 NS1932030 EACH 220.92  
REMOVALS 12.1" TO 19" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
303 NS1932031 EACH 281.94  
REMOVALS 12.1" TO 19" - REMOVE ALL DEBRIS - PER TREE - YEAR 3  
304 NS1932032 EACH 232.91  
REMOVALS 19.1" TO 24" - LEAVE ALL DEBRIS - PER TREE - YEAR 3  
305 NS1932033 EACH 360.05  
REMOVALS 19.1" TO 24" - CHIP UNDER 6" DEBRIS, LEAVE BULK - PER TREE - YEAR 3  
306 NS1932034 EACH 432.53  
REMOVALS 19.1" TO 24" - REMOVE ALL DEBRIS - PER TREE - YEAR 3

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**NEGOTIATED CON EDISON SERVICES TERMS AND CONDITIONS 2.20.13 LEWIS  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
STANDARD TERMS AND CONDITIONS  
FOR  
SERVICE CONTRACTS**

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July 1, 2012  
As modified February 20, 2013 for Lewis Tree Service, Inc.

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### Appendix A - Required Clauses and Certifications

#### **STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS**

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

"Con Edison"-Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for services to be performed for Con Edison or its affiliate, Orange and Rockland Utilities, Inc. ("O&R").

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

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"Contract"-The contract between Con Edison and the Contractor consisting of (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or the Con Edison Standard Purchase Order ("purchase order")

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), (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 the Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if the Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of the Contractor's offer; provided, however, if the Contractor's offer contains terms additional to or different from those or 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 acknowledgement electronically by the Contractor of the Contract in the Procurement System or, if the Contractor is not enabled in the Procurement System, by the signing by the Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing the Contractor's acceptance thereof), or the Contractor's commencement or continuation of the services ordered under the Contract following its receipt of the Contract or such other writing, such performance signifying the Contractor's acceptance of the terms thereof.

3.Amendments. No revision or 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 the Contractor within thirty (30) days after receipt and processing of proper invoices with required supporting documentation.

B.Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department, after the rendering of the services for which payment is to be made, in such detail and with such supporting documentation as 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 reimbursable supplies and materials. If the Contract provides for services to be rendered on an hourly-rate basis, invoices shall include the number of hours worked and the hourly Blanket Purchase Agreement 4156125,

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rate for each person performing services as well as the total amount invoiced, and shall be accompanied by signed time sheets and any other data or supporting documentation reasonably required by Con Edison.

C.Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in the progress of the services.

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

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

### 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 services furnished hereunder, and Con Edison agrees to pay or reimburse the Contractor 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

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shall reimburse the Contractor for any interest, penalties or expenses the Contractor 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 the Contractor shall cooperate and assist Con Edison therewith.

B. Payroll Taxes and Contributions. The Contractor assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of the state of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the services to be performed.

7. Time of Performance. The Contractor shall perform the services to be furnished in accordance with any schedule of performance stated herein. It is understood and agreed by the Contractor that **TIME IS OF THE ESSENCE OF THE CONTRACT** and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by Con Edison of revised schedules from the Contractor during the performance of the services shall not be deemed a waiver of the contract completion date.

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8. Excusable Delay. The Contractor 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 the Contractor, a strike not caused or prolonged by an unfair labor practice of the Contractor, public disorder or riot, a failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in the Contractor'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 the Contractor from another source. The Contractor 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 Contractor'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 the Contractor's performance hereunder at any time. The Contractor 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, the Contractor 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 the Contractor establishes to the satisfaction of Con Edison were incurred by the Contractor solely by reason of the suspension, provided, however, that such entitlement is conditioned upon the Contractor's notifying Con Edison in writing within fifteen (15) days of the suspension that additional costs will or may be incurred thereby and upon the Contractor'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 Contractor to receive any additional costs.

10. Warranties. The Contractor warrants that services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practice. The Contractor also warrants that services furnished hereunder shall meet any and all tests and conform strictly to all specifications and comply strictly with all performance requirements contained in the Contract. The Contractor further warrants any goods furnished hereunder in connection with such services to be new and free from defects in title, design, material, fabrication and workmanship, to conform strictly to any applicable samples and to specifications, drawings and other descriptions herein, and to be suitable for the purpose intended. Should any failure to meet any of the warranties stated herein appear within eighteen (18) months of the completion of all services rendered hereunder, the Contractor shall upon notice by Con Edison reperform the services and replace or repair any goods not conforming to the foregoing warranties promptly and without expense to Con Edison. In the event of failure of the Contractor promptly to remedy as aforesaid any breach of warranty Con Edison may correct the deficiencies and charge the Contractor the cost thereof. The aforesaid warranties shall survive acceptance of and payment for the services furnished hereunder. After any such services have been redone and materials or articles replaced or repaired pursuant to the foregoing warranties, they shall be subject anew to the foregoing warranties. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.



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11.Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any Blanket Purchase Agreement 4156125,

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specifications, drawings or data incorporated herein. Any such changes shall be directed in writing (electronically or in print form). 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 Contractor for adjustment under this Article shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison, without prejudice to its right to 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 Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If the Contractor 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 the Contractor without recourse to Con Edison.

C.For time and material work, Contractor 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 Article 10 (Warranties) above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs, including, 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 the Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract work 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.

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B.For each claim for Non-Contract Work, as defined in A(i) of this Article, the Contractor must give written notice to Con Edison's designated representative within 5 days of when the Contractor 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, the Contractor must give written notice to Con Edison's designated representative within five (5) days of Contractor'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 Contractor 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 Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor 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

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notice required by paragraph B of this Article, the Contractor 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 in 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 the Contractor's bid for the performance of the work that had its cost Blanket Purchase Agreement 4156125,

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increased, the actual cost to the Contractor to perform such work, and the amount of the Increased Costs for which the Contractor claims Con Edison is responsible; 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. Contractor'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 Contractor that neither the Contractor 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 the Contractor 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 the Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the services hereunder are being performed and will be performed in full accordance with the requirement of the Contract and on schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to the premises at which services hereunder are being performed 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 services rendered 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 a deficiency in the Contractor's performance or that it was not in accordance with the Contract requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by Con Edison or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish goods and services fully in accordance with the requirements of the Contract. Any articles or equipment serviced or repaired hereunder shall be subject to inspection and testing by Con Edison after completion of the services (and after delivery to Con Edison, if it has been removed from Con Edison's premises), and final payment for repaired articles or equipment shall not be due before acceptance of the articles or equipment after testing. Payment prior to testing shall not constitute acceptance.

15. Personnel.

A. Personnel assigned to perform services hereunder who are specifically designated personnel in the Contract shall devote substantially all their working time to performing work under the Contract, unless there is an express provision to the contrary in the Contract, and shall not be removed from such assignments without the prior written consent of Con Edison. Con Edison shall have the right to approve replacements for such designated personnel. Contractor shall remove any personnel from performing services under the Contract as may be requested by Con Edison.

B. The Contractor and its permitted subcontractors shall not employ any Con Edison or O&R employee to perform any services hereunder without the prior written permission of Con Edison. Further, neither Contractor nor any of its subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the

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subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order."

16.Subcontracting.

A.The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval. Nothing contained herein shall create any contractual rights in any subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the services furnished hereunder to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, and comply with the other requirements relating to insurance as are required of the Contractor hereunder, including, but not limited to, the requirements relating to naming Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Subcontracts shall provide for the Contractor the same rights against the subcontractor as Con Edison and O&R have hereunder against the Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, NY 10003

Attention:Purchasing Department

Section Manager,

Technology and Strategic Initiatives

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17.Assignment. The Contractor 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, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract.

18.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 the Contractor or its subcontractors in connection with the Contract shall, except to the extent indicated in writing by Con Edison (or O&R with respect to services ordered for O&R), 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 upon completion of such performance. The Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding its services 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. The Contractor acknowledges that its violation of the provisions of this Article may result in irreparable harm to Con Edison and O&R, the amount of which would be

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difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, the Contractor agrees that either or both of Con Edison and O&R will be entitled to injunctive relief to enforce the terms of this Article, in addition to their remedies at law.

19. Infringement. If the Contractor, 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 Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use under the Contract by securing a suitable agreement from the owner of such right. The Contractor 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 out of or related to a claim against an Indemnified Party that the services rendered hereunder, or any goods, designs, processes or works of authorship (including computer programs and documentation) supplied in connection therewith or resulting therefrom, infringe any patent, copyright, trademark or any other proprietary right. The Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded against an Indemnified Party. Con Edison shall notify the Contractor of any such claim, suit or proceeding in writing and give the Contractor authority, information and assistance (at the Contractor's expense) for the defense thereof. In the event that the use of any goods, designs, processes or works of authorship furnished hereunder is enjoined, the Contractor shall promptly, at its own expense, either (a) procure for Con Edison (or O&R, with respect to services performed for O&R) the right to continue using such goods, designs, processes or works of authorship or (b) with the approval of Con Edison, (i) replace them with noninfringing goods, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

20. Indemnification. To the fullest extent allowed by law, the Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns 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 the Contractor or any subcontractor, or any of their agents, servants, representatives or employees, or non-parties to the Contract under Blanket Purchase Agreement 4156125,

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

21. Insurance. The Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract), at its own expense, 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 any part of the services involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Contractor shall be for not less than \$7,500,000 per occurrence for bodily injury or death or property damage or a combined single limit of not less than \$7,500,000 per occurrence.) There shall be no policy deductibles without Con Edison's prior written approval.

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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 services furnished hereunder and completed operations. There shall be no exclusion for claims by Contractor's employees against Con Edison or O&R based on injury to Contractor's or any subcontractor's employees.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Contractor or any Subcontractors, with a combined single limit of not less than \$1,000,000 per Blanket Purchase Agreement 4156125,

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accident for bodily injury or death and property damage.

D. Where the work involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by the Contractor or any subcontractors, 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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Contractor shall require the subcontractor to name Contractor, 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 services include any architectural, 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 services to be furnished under the Contract.

The Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days' prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 work at Con Edison's premises the Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above 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 services and completed operations. Con Edison shall have the right, upon request, to require the Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor, 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 the Contractor's contractual obligations hereunder.

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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)

22. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by

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written notice to the Contractor terminate the Contract, in whole or in part, without liability to the Contractor except as stated in this Article. In the event of such termination, in full discharge of its obligations to the Contractor in respect of the Contract and such termination, Con Edison shall pay the Contractor for services performed 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 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 the Contractor of any obligation which may arise out of services performed prior to termination. In no event shall Con Edison be liable to the Contractor for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales.

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

24. Ownership of Documents and Materials; Ownership of Intangible Property.

A. With respect to all documents and materials, including, but not limited to, drawings, plans, Blanket Purchase Agreement 4156125,

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

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

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of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Blanket Purchase Agreement 4156125,

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Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

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

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

26. Compliance with Laws. The Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder. The Contractor shall provide Con Edison, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article. Without limiting the generality of the foregoing, the Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which are 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 contractors to the federal government.

27. Set-Off. Con Edison shall have the right to set off against any sums due the Contractor under the Contract any

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claims Con Edison may have against the Contractor under the Contract or any other contract between Con Edison Blanket Purchase Agreement 4156125,

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and the Contractor without prejudice to the rights of the parties in respect of such claims.

28. Investigation and Audit. Contractor 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 services furnished under the Contract, and the Contractor 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 22 (Termination for Convenience) of these Standard Terms and Conditions, the Contractor 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 respective authorized representatives during the term of the Contract and for a period of six (6) years after final payment under the Contract. If an investigation, audit, or inquiry discloses that Con Edison has paid the Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, or for any other costs that were improperly charged, the Contractor shall refund to Con Edison an amount equal to such payment.

29. Required Approvals

A. The Contractor will not be permitted to perform any field service work, including but not limited to installation, maintenance, and repair, until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

B. Where required by the Contract, the Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. 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 their implementation.

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

31. Effect of Con Edison Approval. The Contractor's obligations under the Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve the Contractor's work hereunder, including, but not limited to, 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 Contractor 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 the Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance, and shall not release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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32. Safeguards. The Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Contractor 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 the Contractor shall have been tested and meet all applicable ANSI standards and legal requirements, shall be of high quality and in good working order. The Contractor 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 the Contractor's work practices or conditions created by the Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. The Contractor 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 the site, a Con Edison employee (or an O&R employee where services were ordered for O&R) directs the Contractor to discontinue an operation because it may be unsafe or illegal, the Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. The Contractor shall



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obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

33. Maintenance of Work Site. The Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the performance of the services or the work of any other 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, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the services suspended until the condition is corrected and all costs associated therewith shall be borne by the Contractor.

34. Vehicle Spills. Contractor 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. 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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

35. Protection of Persons and Property; Notice of Accidents

A. When the Contractor performs services hereunder, the Contractor shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. The Contractor  
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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. The Contractor shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Con Edison's premises, 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. The Contractor 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, the Contractor 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 the Contractor 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 the Contractor.

D. When the Contractor or any permitted subcontractor performs services hereunder, its employees and consultants are required to have available a Contractor (or a subcontractor) or government-issued name and photo identification for review by Con Edison.

36. Communication with Supervisors. When work is performed outside of the Contractor's own premises, the Contractor must provide at all times an on-site representative with full authority to act for the Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for the Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, the Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by the Contractor in this role shall be subject to the continuing approval of Con Edison.

37. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions

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incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that the Contractor's offer is referred to in the Blanket Purchase Agreement 4156125,

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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.

38. Waiver. Neither the acceptance of goods or services or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of the Contractor's duties or obligations nor any failure of Con Edison to insist on strict performance by the Contractor of this Contract or to assert Con Edison's rights in any one or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of a breach hereof, shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

39. Relationship of Parties. The Contractor shall be an independent contractor in the performance of the services hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the parties, or joint employers of the Contractor's employees.

40. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and the Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

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

43. Title and Risk of Loss (Repair Services). If the Contract is, in whole or in part, for repair, maintenance or modification of equipment, the additional provisions in this Article 43 shall apply. Con Edison will retain title to equipment to be repaired or modified by the Contractor. Title to parts installed by the Contractor in Con Edison equipment, whether or not on Con Edison's premises, will pass to Con Edison upon installation. The risk of loss of or damage to the Con Edison equipment shall be borne by the Contractor from the time such equipment is turned over to the Contractor by Con Edison or, if it is to be delivered to the Contractor by others, from the time it is turned over to a carrier for shipment to the Contractor. The risk of loss or damage shall remain with the Contractor at all times thereafter until the equipment is returned and accepted by Con Edison at its premises if it has been removed or, if the services are being performed on Con Edison's premises, until the work has been completed, the Contractor Blanket Purchase Agreement 4156125,

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so notifies Con Edison in writing and the equipment restored to Con Edison's care, custody and control.

44. Material Safety Data Sheets. The Contractor shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be contained in the goods to be furnished or used in the performance of services hereunder. For this purpose, a toxic substance is any that is listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete and return an MSDS promptly when requested to do so by Con Edison shall be grounds for cancellation of the Contract for default.

45. Submission to Jurisdiction/Choice of Forum

A. The Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. The Contractor agrees that service of process on the Contractor in

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relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to the Contractor at the address shown in the Contract or at the address of any office actually maintained by the Contractor, or by actual personal delivery to the Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. The Contractor consents to the selection of the state and the federal courts situated in the City of New York or in Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

46. 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 16, 19, 20, 21, 28, 35, 46 and 49 are third party beneficiaries of the Contract and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

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

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

49. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other purchase orders and contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other purchase order or contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contract between Con Edison and Contractor (including, but not limited to, the right to payments for services performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such purchase orders or contracts, and in law and

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equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).  
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### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1.Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Blanket Purchase Agreement 4156125,

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Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Con Edison has met its minimum purchase obligation as set forth below.

##### **2.Maximum and Minimum Quantities**

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

##### **3.Orders for Goods or Services**

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

##### **4.Terms and Conditions**

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

##### **5.Partial Deliveries**

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The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

##### **6.Shipping Notices**

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

##### **7.Expenditure Limitation**

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform

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Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### **8. Completion of Performance**

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

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As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not

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result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

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The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Blanket Purchase Agreement 4156125,

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Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment

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of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

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(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to Blanket Purchase Agreement 4156125,

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the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### **Signatures**

#### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 14

CONTRACTOR: ABB INC

PURCHASE ORDER NO.: 4159889

BID COMPARISON:

ONLY ONE QUOTE RECEIVED



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Complex Services PO 4159889, 2  
Proprietary and Confidential Page 1 of 42  
**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Complex Services PO**  
Order **4159889**  
Revision **2**

PO Approved Date **05/30/2013**  
Revision Date **05/30/2013**

Buyer **Deidre Thompson**  
Supplier: **ABB INC**  
**12040 REGENCY PKWY STE 300**  
**CARY, NC 27518**  
**UNITED STATES**

Supplier  
Contact:  
**SMITH PAMELA**  
**(919) 852-3229**

Key  
ConEd  
Contact:  
**Robert Ostrem**  
**917-440-4066**  
**OSTREMR@CONED.COM**  
Ship To: **247 WILLIAMS STREET**  
**BROOKLYN, NY 11207**  
**UNITED STATES**  
Bill To: **PO Box 799**  
**Cooper Station**  
**New York, NY 10276-0799**  
**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**5676 Net 30**

**Notes:** This PO is for the purchase and installation of switchgear for the Brownsville Sub-Station. Equipment shall be in accordance with General Purchase Specification CE-ES-4081 Rev 10 Part I and Parts III, Detail Specification CE-ES-4081-42 and all drawings and specifications referenced therein.

The terms and conditions governing this purchase order shall be the following which are hereby incorporated by reference and made part of this order:

\* Con Edison Company of New York, Inc. Standard Terms and Conditions for Installation of Equipment, dated July 1, 2012 as modified May 9, 2013 for ABB, Inc.

; and

\* Con Edison Company of New York, Inc. Standard Terms and Conditions for the Purchase of Equipment dated July 1, 2012 as modified May 1, 2013 for ABB, Inc.

; and

\*Scope of Work, Technical Details, Pricing Figures, and Delivery Terms only from quote from ABB, Inc. to Con Edison dated 1/10/12.

\*Signed disclosure form dated October 22, 2012; and

\*The attached Appendix A ; and

\*The attached Gift Policy.

Reference Documents: ABB Disclosure Form Final for Bid Event 39004.pdf

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ABB Quote 12Q1786299 Event 59007 Brownsville SS.pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

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Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 Needed:

05/15/2014

1 LOT 390305.00 390,305.00

All engineering and design for the removal of existing circuit breakers and gas installation of new gas insulated equipment (7 days/week, 24 hours/day)

1-1 All engineering and design for the removal of existing circuit breakers and gas installation of new gas insulated equipment (7

days/week, 24 hours/day)

Needed:

05/15/2014

1 LOT 390305.00 390,305.00

Ship To:

Use the ship-to address at the top of page 1

2 Needed:

05/15/2014

2 EACH 238182.00 476,364.00

Brownsville 33E-L two (2) 38 kV, 1200amp, 40kA sym., gas insulated vacuum switchgear cubicles in accordance with gen spec CE-ES-4081 Rev.10 part I and III / detail spec CE-ES-4081-42, rev. 0

2-1 Brownsville 33E-L two (2) 38

kV, 1200amp, 40kA sym., gas insulated vacuum switchgear cubicles in accordance with

gen spec CE-ES-4081 Rev.10 part I and III / detail spec

CE-ES-4081-42, rev. 0

Needed:

05/15/2014

2 EACH 238182.00 476,364.00

Ship To:

Use the ship-to address at the top of page 1

3 Needed:

05/15/2014

16 HOUR 100.00 1,600.00

Equipment Rental

3-1 Equipment Rental Needed:

05/15/2014

16 HOUR 100.00 1,600.00

Ship To:

Use the ship-to address at the top of page 1

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Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price  
(USD)

Amount

(USD)

4 Needed:

05/15/2014

1 EACH 157521.00 157,521.00

Spare circuit breaker assembly

4-1 Spare circuit breaker assembly Needed:

05/15/2014

1 EACH 157521.00 157,521.00

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Ship To:

Use the ship-to address at the top of page 1

5 Needed:

05/15/2014

5 Daily 2586.00 12,930.00

Technican - Daily rate

5-1 Technican - Daily rate Needed:

05/15/2014

5 Daily 2586.00 12,930.00

Ship To:

Use the ship-to address at the top of page 1

6 Needed:

05/15/2014

16 HOUR 485.00 7,760.00

Technican - Overtime

6-1 Technican - Overtime Needed:

05/15/2014

16 HOUR 485.00 7,760.00

Ship To:

Use the ship-to address at the top of page 1

7 Needed:

05/15/2014

16 HOUR 646.00 10,336.00

Technican - Sunday and Holiday

7-1 Technican - Sunday and

Holiday

Needed:

05/15/2014

16 HOUR 646.00 10,336.00

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Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

Ship To:

Use the ship-to address at the top of page 1

Total: **1,056,816.00 (USD)**

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Con Edison's Standard Terms and Conditions for Purchasing of Equipment dated 7/1/2012, Modified for ABB dated 5.1.13**

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

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**STANDARD TERMS AND CONDITIONS  
FOR**

**PURCHASE OF EQUIPMENT**

Standard Purchase Order 4159889, 2

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July 1, 2012

Modified May 1, 2013 for ABB Inc.

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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").

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"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

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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

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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 Standard Purchase Order 4159889, 2

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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 **TIMELY PERFORMANCE IS A MATERIAL TERM 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. Title and Risk of Loss

. Unless otherwise specified in the purchase order, title to and risk of loss of any articles, materials and equipment to be furnished hereunder shall pass to Con Edison at the Con Edison facility to which delivery is to be made.

### 9. 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.**

### 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 specified purpose 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

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competently by qualified personnel and in accordance with industry standard, accepted practices. Should any failure to meet any of the warranties stated herein appear within twelve (12) months after initial operation of the equipment Standard Purchase Order 4159889, 2

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or eighteen (18) months after delivery (DAP named destination of the equipment to Con Edison), whichever first occurs. Seller shall 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. In case of a failure, the Seller may be responsible for "In and Out" costs, which include disassembly, loading onto the transport vehicle, transportation to repair facility and back to the site, unloading back onto the foundation at the substation and re-assembly, as may be specified in a particular Blanket Purchase Agreement or the applicable purchase order. Con Edison is responsible for all costs to provide clear access for the manufacturer to remove and reinstall the transformer.

**The warranties set forth herein are exclusive and in lieu of all other warranties, express or implied, (including warranties of merchantability and warranties arising from course of dealing or usage of trade), except for warranties of title and non-infringement.**

### 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 Standard Purchase Order 4159889, 2

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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").

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,

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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 Standard Purchase Order 4159889, 2

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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 Standard Purchase Order 4159889, 2

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risk, pending Seller's disposition instructions.

### 15. Subcontracting



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. 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 Standard Purchase Order 4159889, 2

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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 its 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.

Seller shall have no obligation hereunder and this provision shall not apply: (a) to the extent any infringement results from a design furnished by Con Edison, or (b) any action settled without the prior written consent of Seller. If, in any such infringement action, any equipment is held to constitute an infringement, or the practice of any process using the equipment is finally enjoined, Seller shall, at its option and its own expense, procure for Con Edison the right to continue using said equipment; or modify or replace it with noninfringing equipment; or remove the equipment (at Seller's cost) and refund the portion of the price allocable to the infringing equipment. THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER FOR ANY PATENT INFRINGEMENT

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RELATING TO ANY EQUIPMENT PURCHASED HEREUNDER.

### 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, asserted by 3rd parties for injury to or the death of persons or physical damage to third party tangible property, 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, employees and any others acting under their control or supervision, except to the extent arising from the negligence of Con Edison or non-parties to the Contract not under Seller's control or supervision (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, Standard Purchase Order 4159889, 2

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and thereafter to the extent stated below, with 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 \$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 \$5,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$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 any part of the services involves Con Edison's gas or steam system or boiler controls, the insurance procured and maintained by the Contractor shall be for not less than \$7,500,000 per occurrence for bodily injury or death or 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, except to the extent arising from the negligence of Con Edison or non-parties to the Contract not under Seller's control or supervision (including, but not limited to, O&R).

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 \$1,000,000 per accident, and, aggregate for bodily injury or death and property damage.

D. If the work involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by the Contractor or any subcontractors, 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.

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E. Intentionally omitted.

## **Contains Confidential Commercial Information**

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, except to the extent Contractor is self-insured for such Professional Liability Insurance and if Contractor furnishes documentation acceptable to Con Edison evidencing such self-insurance and provides Con Edison with a statement from an authorized officer of Contractor on Contractor's letterhead certifying that Contractor's then current financial wherewithal is sufficient to cover any Professional Liability claims, at the levels stated above.

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 Certificates of Insurance as evidence of the types and levels of coverage maintained for 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 thirty (30) 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 as set forth above with respect to all coverages enumerated in paragraph B of this Article with respect to the performance hereunder and completed operations. In the event of an occurrence that gives rise to a claim or potential claim, Con Edison shall have the right, upon request, to review a copy of the insurance policy or policies required hereunder as it may pertain to such claim or potential claim, but, ConEd's access to review such policies is limited to performing such review on ABB's premises, at its offices in Connecticut.

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, except to the extent of 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

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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 material 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 material 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

## **Contains Confidential Commercial Information**

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.

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, and, expressly set forth herein to be delivered, by Seller in connection with Work ordered for Con Edison (hereinafter, "Con Edison Materials"), and, except to the extent 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, but, only for the limited purposes of owning, operating, repairing and maintaining the Equipment and Con Edison may disclose the Con Edison Materials to third parties for the purpose of operating, repairing and maintaining the Equipment.

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Nothing in this Agreement shall be deemed to convey to Con Edison any title to or ownership in the any Software or other intellectual property contained therein in whole or in part, nor to designate the Software, or, other intellectual property a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of any License, Con Edison shall immediately cease using the Software and/or other intellectual Property, without retaining any copies, notes or excerpts thereof, return to Seller all copies thereof and shall remove all machine readable Software from all of Con Edison's storage media. Any Seller owned intellectual property provided hereunder shall remain the property of Seller, and, its use by Con Edison shall be limited to that necessary for the installation, operation and maintenance of the Work.

### **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 give rise to an action by Seller for damages, in contract or in tort, and, entitle Seller to cancel or rescind the Contract or abandon its performance. In addition, 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

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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, but, only with respect to contracts performed on a "cost reimbursable" basis, 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**

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. 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

## **Contains Confidential Commercial Information**

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**

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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

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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

## **Contains Confidential Commercial Information**

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**

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. 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.

. 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

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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

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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).

### **47. Limitation of Liability**

A. Neither party shall be liable to the other party hereunder for indirect, special, or consequential damages, including, but not limited to, loss of revenue.

B. Seller's maximum liability under this Contract shall be one and one-half (1.5) times the total amount of the purchase order which includes the product at issue, or five million dollars, whichever is greater. Con Edison agrees that the exclusions and limitations set forth in this Article 47 are separate and independent from any remedies which Con Edison may have hereunder and shall be given full force and effect whether or not any or all such remedies shall be deemed to have failed of their essential purpose. These limitations of liability are effective even if Seller has been advised by Con Edison of the possibility of such damages.

C. Notwithstanding anything to the contrary herein, the limitations set forth in Articles 47 A. and B. above shall not apply to the provisions of Article 17 (Confidentiality), Article 18 (Infringement), Article 19 (Indemnification), and Article 25 (Compliance with Laws).

D. Seller shall reimburse Con Edison and O&R for any damage to their tangible property, to the extent such damage results from the negligence or willful misconduct or any strict liability obligation of Seller, any subcontractor, their agents, servants, representatives, employees or any others acting under their supervision or control; provided, however, that such reimbursement shall not exceed ten million dollars (\$10,000,000) per purchase order issued hereunder.

350501

### **Con Edison's Standard Terms and Conditions for Installation of Equipment dated 7/1/2012, modified for ABB dated 5/9/13**

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

#### **SPECIAL CONDITIONS**

#### **FOR**

#### **INSTALLATION OF EQUIPMENT**

(This document supplements the Consolidated Edison Company of New York, Inc.

Standard Terms and Conditions for Purchase of Equipment.)

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July 1, 2012

As modified May 9, 2013 for ABB Inc.

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### **SPECIAL CONDITIONS FOR INSTALLATION OF EQUIPMENT**

(This document supplements the Consolidated Edison Company of New York, Inc. Standard Terms and Conditions for Purchase of Equipment.)

In the event the Contract provides for Seller to install or erect any of the Equipment supplied under the Contract, the Standard Purchase Order 4159889, 2

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additional terms and conditions set forth below shall apply:

1. Definitions. In these Special Conditions, Seller is referred to as "Contractor," "Work" shall mean the installation or erection of any of the Equipment as contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to installation or erection; equipment, material and structure to be installed or erected; and other things of any nature necessary or proper for the completion of the installation or erection, whether or not expressly specified herein, and "Subcontractor" shall mean any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings.

No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are a part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the Contract documents before performing the Work and shall promptly call to the attention of, and submit in writing to, Con Edison, whenever discovered, whether before or after the Work has commenced, any inconsistency, ambiguity, or error which may exist between any documents or between any parts of the same document and shall abide by the written direction of Con Edison's authorized representative with respect thereto.

Contractor hereby waives any claim for extra compensation based on an inconsistency, ambiguity, or error which the Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the Work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

3. Contractor's Performance

A. Contractor shall perform, in a good workmanlike manner and in accordance with best accepted practices in the industry, all the Work specified or reasonably implied in the Contract, in accordance with its Standard Purchase Order 4159889, 2

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terms and the directions of Con Edison and its authorized representatives, as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to, all materials, labor, tools, equipment, apparatus, water, lighting, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work. Contractor shall provide a full time on-site representative who shall be deemed to have full authority to act for Contractor. The continuance of this individual in that role will be subject to the continuing approval of Con Edison.

B. Contractor shall provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for the Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative shall ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by the Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall not use hazardous substances.

If, in the opinion of Con Edison, any of Contractor's equipment, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for, and shall safeguard, its equipment, tools, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement of materials and vehicular access to the site shall be in accordance with applicable laws and ordinances. Access to all underground facilities, including, but not limited to, through Con Edison, New York City and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from

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burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch with appropriate fire fighting equipment during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **4. Safeguards in Work**

A. Contractor shall provide and maintain, at its own expense, safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely. Contractor shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe. Contractor shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions, and Contractor shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the

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nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 4 and without limitation thereof, the Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. The Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If, in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions Standard Purchase Order 4159889, 2

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created by the Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the Work until such practices and conditions are corrected. Contractor 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 the site, a Con Edison employee (or O&R employee, for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if Contractor disagrees with the Con Edison or O&R employee, Contractor shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the Con Edison or O&R employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R, the Department of Transportation Administrator, and representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

### **5. Labor**

A. Unless otherwise specifically stated in the Contract, Contractor shall provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work, or by local, contractual, or other rules or regulations. Unless otherwise specifically provided in the Contract, the costs of all labor, including supporting crafts, are included in the Contract price. Within respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the Work site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice thereof, including all relevant information with respect thereto. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event of any labor dispute which adversely affects the timely and efficient performance of the Work, including, but not limited to, a jurisdictional

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dispute, Contractor shall exercise all rights and avail itself of all remedies under collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including, but not limited to, the filing of an unfair labor practice charge with the National Labor Relations Board and the seeking of an injunction.

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B. The Immigration Reform and Control Act of 1986 Pub.L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

6. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by the Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

7. Changes (Including Extra Work). (Supplementing Article 11 (Changes) of the Con Edison Standard Terms and Conditions for Purchase of Equipment.)

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of the Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price and/or schedule, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices. With respect to Work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor,

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equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in the Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:  
(i) Labor

Contractor will be compensated for each hour of Work performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates is entitled "New York City and Westchester County Labor Rates

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for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County" as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **(ii)Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### **(iii)Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month, and 22 working days per 30-day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be Standard Purchase Order 4159889, 2

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considered included in the labor rate and will not be separately compensable.

C. Any claim by Contractor for adjustment under this article shall be deemed waived unless asserted in writing within thirty (30) days from receipt by Contractor of the direction to make the change. In the event any such adjustment is not agreed upon promptly, Contractor shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

D. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

8. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

9. Subsurface Conditions Found Different. Con Edison shall not be obligated to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown, that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications, it will make any changes in the plans and/or specifications, it deems necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 7 (Changes (Including Extra Work)) of these Special Conditions.

10. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including, but not limited to, the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such

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code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A to the Con Edison Standard Terms and Conditions for the Purchase of Equipment, which is incorporated into such Standard Terms and Conditions. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors of the federal government. Standard Purchase Order 4159889, 2

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11. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to insure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

12. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis, and more frequently if directed by the Con Edison representative, 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

13. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the site of installation or erection. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

14. Liens. Contractor shall save harmless and indemnify Con Edison against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. Contractor shall furnish Con Edison a Waiver of Liens in full with the presentation of Contractor's final invoice for payment. Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes a Waiver of Lien. Contractor may, if any of its Subcontractors or suppliers refuse to furnish a Waiver of Lien, furnish a bond satisfactory to Con Edison indemnifying Con Edison against any lien. If required by Con Edison, Contractor shall furnish Con Edison, in addition to the Waiver of Lien, an affidavit that so far as Contractor has knowledge, the Waiver of Lien includes all labor and material for which a lien could be filed. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. If any lien remains unsatisfied after final payment has been made to the Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including Standard Purchase Order 4159889, 2

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all costs and attorneys' fees.

15. Protection of the Work. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor. Contractor shall comply with all reasonable requests of Con Edison to enclose or specially protect the Work. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires.

16. Protection of Persons and Property; Notice of Accidents (Supplementing Article 34 (Protection of Persons and Property; Notice of Accidents) of the Con Edison Standard Terms and Conditions for Purchase of Equipment.)

A. Safety hats and other appropriate personal protective equipment (PPE) shall be worn at all times in the Work area by Contractor's employees.

B. Contractor shall provide at the Work site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work

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and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

C.If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof.

In the event of an emergency threatening injury to persons or damage to property the Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

17.Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison. Any and all such bonds shall be in a form and in an amount and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself, shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

18.Other Contractors

A.Contractors shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

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B.If any other contractor or any Subcontractor shall suffer loss or damage through acts or omissions on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless against any such claim and any loss or liability arising therefrom, in accordance with the indemnification provisions set forth in the Con Edison Standard Terms and Conditions for Purchase of Equipment, as modified May 1, 2013, for Contractor, which these Special Conditions supplement.

C.Contractors and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered for O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

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The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small

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Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and



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60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)  
The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

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### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of Standard Purchase Order 4159889, 2

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title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

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Appendix A.  
337730

**Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 15

CONTRACTOR: MAXYMILLIAN TECHNOLOGIES INC

PURCHASE ORDER NO.: 4167052

BID COMPARISON:

\$6,588,700

\$8,413,015

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COMPASS Complex Service PO  
4167052, 1

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4167052**

Revision **1**

PO Approved Date **06/06/2013**

Revision Date **06/06/2013**

Buyer **Lisa Presotto**

Supplier: **MAXYMILLIAN TECHNOLOGIES INC**

**890 WINTER ST STE 225**

**WALTHAM, MA 02451**

**UNITED STATES**

Supplier

Contact:

**ANTHONY JOHN**

**(413) 4993050**

Key

ConEd

Contact:

**Ulrick Samuel**

**718-204-4010**

**SAMUELU@CONED.COM**

Ship To: **31-01 20TH AVE (BLDGS. 136 & 137)**

**ASTORIA, NY 11105**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**9151 Immediate N/A**

**Notes:** Per Oracle RFQ 67014 shall furnish supervision, labor, tools and materials to complete the scope of work for the Former Kent Avenue Generating Station Interim Remedial Measure project.

The scope of work includes excavation, transportation and offsite disposal of ACM-impacted soil and debris, demolition and disposal of interior basement walls, remnant subsurface structures. In addition, the contractor is responsible for all associated dewatering and water management, post-excavation sampling and furnish and install clean backfill material.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$ 6,293,290.70. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Price: \$6,293,290.70

Option Price for Full Containment Abatement: \$2,446,772

Construction Schedule: 220 Work Days

This purchase order will be performed in accordance with & incorporates by reference the following:

COMPASS Complex Service PO

4167052, 1

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- All documents referenced in RFQ 67014, Contract Drawings and Specifications for Kent Avenue IRM Design Specifications: Civil Site Work Drawings and Specifications dated 14-Dec-12 prepared by Shaw Environmental

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- Pre-Bid Site Meeting Minutes dated 18-Jan-13
- Signed Pre-Award Meeting minutes dated 06-May-13 (rev.1; 14-May-13 – Kent Avenue Interim Remedial Measure Project, and all items referenced therein.
- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/2012.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008

- Contractor's submitted Compliance & Exception, Offer dated 26-Feb-2013 & Disclosure Forms dated 28-Feb-2013 (Maxymillian took No Exceptions)

No contractor can perform any work before a hasp is approved by EH&S.

Reference Documents: Supplemental Construction Contract Requirements (SCCR).pdf

500 Kent Ave IRM PreAward Minutes-06-May REVISED

14-MAY-2013.pdf

Pre-Bid Meeting Minutes Kent Avenue IRM.docx

Kent Avenue IRM Design Specifications Civil Site Work Drawings

and Specifications dated 14-Dec-12 prepared by Shaw

Environmental.pdf

MT Disclosure Form.pdf

MT Compliance Form.pdf

Bid Form Addendum 2 Open Air 2013 02 05 (2)(Maxymillian)

(1).xlsx

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

1 Needed:

03/06/2013

1 EACH 6293290.7

0

6,293,290.70

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 314,664.55

Retainage Rate: 10%

Reference Documents: Copy of Bid Form Addendum 2 Full Containment 2013 02 05.xlsx

Copy of Bid Form Addendum 2 Open Air 2013 02 05.xlsx

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

03/06/2013

1 EACH 6293290.7

0

6,293,290.70

Ship To:

Use the ship-to address at the top of page 1

Total: **6,293,290.70 (USD)**

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**Contract Terms and Conditions**

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**Terms and Conditions**

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**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

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

"Con Edison" - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" - The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" - The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" - Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3. Specifications, Plans, and Drawings.

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency,

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ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4. Price and Payment.**

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor

furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be



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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any

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liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such Standard Purchase Order 4167052, 1

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all

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buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature

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contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

### **9. Contractor's Performance.**

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract

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drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4167052, 1

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Standard Purchase Order 4167052, 1

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

(i) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### (ii)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### (iii)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Standard Purchase Order 4167052, 1

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14.Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4167052, 1

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the

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requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4167052, 1

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse

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to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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



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performed the work whose costs were increased;

(c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E.Contractors shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F.Contractors 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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17.Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents,

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representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Standard Purchase Order 4167052, 1

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the

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Contract.

H.If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20.Vehicle Spills. Contractor 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 Standard Purchase Order 4167052, 1

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21.Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23.Inspection and Tests and Correction of Defects.

A.Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4167052, 1

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

(i)halt the continuation of such Work; and

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- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### 25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees.

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If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4167052, 1

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of

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Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4167052, 1  
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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4167052, 1

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if

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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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to



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Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Standard Purchase Order 4167052, 1

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Standard Purchase Order 4167052, 1

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or

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other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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 Standard Purchase Order 4167052, 1

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison

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

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

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

47. 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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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. Standard Purchase Order 4167052, 1

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4167052, 1

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to

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incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt

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subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4167052, 1

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation,



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procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

Standard Purchase Order 4167052, 1

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 16

CONTRACTOR: ATTRI ENTERPRISES INC

PURCHASE ORDER NO.: 4173045

BID COMPARISON:

\$2,020,000  
\$2,134,200  
\$2,202,202  
\$2,498,255  
\$2,540,000  
\$2,983,416  
\$2,987,000  
\$2,987,000

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COMPASS Complex Service PO  
4173045, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4173045**

Revision **0**

PO Approved Date **06/28/2013**

Revision Date

Buyer **Elza Renazile**

Supplier: **ATTRI ENTERPRISES INC**

**892 METROPOLITAN AVE**

**BROOKLYN, NY**

**UNITED STATES**

Supplier

Contact:

**ATTRI SHRI**

**7184867395**

Key

ConEd

Contact:

**Ka Cheung**

**718-204-4373**

**CHEUNGK@CONED.COM**

Ship To: **31-01 20TH AVE (BLDGS. 136 & 137)**

**ASTORIA, NY 11105**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**5677 Immediate DESTINATION**

**Notes:** Astoria Facility Cable Yard Security System

Furnish all labor, material, equipment, insurance and supervision to perform all work associated with the installation of conduit, fencing and steel poles to support the installation of new CCTV cameras. The work scope includes below grade civil work and the installation of new conduit, fencing, steel poles and all wiring associated with the security upgrade at the Astoria Cable Yard. The installation of the CCTV cameras will be performed by others.

No Vendor/Contractor can perform any work before a site specific HASP is approved is approved by Con Edison EH&S.

All work to be performed in accordance with Con Edison's Standard Terms and Conditions of Construction Contracts dated July 1, 2012, Con Edison's Supplemental Construction Contract Requirements (C-CM-004R1) dated June 7, 2011.

Add & Deduct Unit Price

Item Description UOM Price

1 Additional HAND excavation to 5' Depth CY \$220.00

2 Furnish, Deliver and Compact Clean Fill CY \$80.00

3 Load Dispose Excavated Soil Non-Hazardous (PCB<50ppm) TON \$190.00

4 F/I Fence Line includes excavation/sooil disposal LF \$120.00

5 F/I Fence Grounding wire run - 1' Depth LF \$26.00

COMPASS Complex Service PO

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6 F/I Fence Grounding wire run - 2' Depth LF \$43.00

Con Edison Representatives are:  
Joseph Chirichella CCI 917-299-6021  
Joshua Cheung Senior Engineer 718-204-4373  
Rick Simonetti Construction Manager 718-204-4439  
Timothy Carr EH&S Specialist 718-204-4065

The Purchase Order will be performed in accordance with the following:  
Con Edison's invitation to RFQ Event # 95051-2,4 dated 4/16/13 and all documents referenced within.  
Con Edison's Standard Terms and Conditions of Construction Contracts dated July 1, 2012.  
Special Conditions dated March 15, 2013 and all associated documents

Attri Enterprises Inc. (Attri) has visited the site, reviewed the bid documents, and taken no exception.  
Attri signed Offer, Exception, Disclosure, and Compliance Form dated April 18, 2013, no exception.  
Con Edison's Clarifications dated March 18, March 26, April 5, 2013 (2 were issued), April 10, 2013,  
April 12, 2013, April 17, 2013.

Security Plan approved 6-3-13  
The contractor understands that the project duration is (150) Calendar days.  
All prices and amounts on this order are expressed in USD

Line /  
Pay  
Item  
Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

1 Needed:  
05/12/2013  
1 EACH 1887700.0  
0  
1,887,700.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT  
Max Retainage Amount: 94,885.00

Retainage Rate: 10%  
1-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT

Needed:  
05/12/2013  
1 EACH 1887700.0  
0  
1,887,700.00

Ship To:  
Use the ship-to address at the top of page 1

Total: **1,887,700.00 (USD)**  
Standard Purchase Order 4173045, 0

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

#### **EQUAL OPPORTUNITY**

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## **Contains Confidential Commercial Information**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Standard Purchase Order 4173045, 0

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues

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or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Standard Terms and Conditions for Construction Contracts

#### CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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### STANDARD TERMS AND CONDITIONS

#### FOR

#### CONSTRUCTION CONTRACTS

July 1, 2012

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### Appendix A - Required Clauses and Certifications

#### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

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

"Con Edison" - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" - The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall



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be deemed to refer to the Contract.

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"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all Standard Purchase Order 4173045, 0

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such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4.Price and Payment.

A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor

furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each

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subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, Standard Purchase Order 4173045, 0

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among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the

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Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to

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require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such Standard Purchase Order 4173045, 0

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7.Safeguards in Work.

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

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

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(or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4173045, 0

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all

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chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii)The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii)Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

### **12. Warranties.**

A. Contractor warrants the Work for a period of three (3) years from the date of completion and

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced

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or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### 13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### (i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### (ii) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

#### (iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Standard Purchase Order 4173045, 0

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which

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equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14. Labor.**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4173045, 0

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work.



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Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4173045, 0

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, no claims for damages or additional costs on account of delay shall be

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permitted.

B. For each claim for Non-Contract Work, as defined in (A)(i) of this Article, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article,

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including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Standard Purchase Order 4173045, 0

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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 Standard Purchase Order 4173045, 0

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on

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any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the

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Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Standard Purchase Order 4173045, 0

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the

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Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4173045, 0

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any

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claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4173045, 0

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4173045, 0

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate



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or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4173045, 0

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to

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Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Standard Purchase Order 4173045, 0

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

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Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Standard Purchase Order 4173045, 0

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

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Attention: Purchasing Department  
Supplier Management Group (SMG)

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4173045, 0

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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

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Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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 Standard Purchase Order 4173045, 0

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically

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identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in

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accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state. Standard Purchase Order 4173045, 0

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other

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contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).  
332439v.2

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)



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ATTACHMENT NO. 17

CONTRACTOR: VERDE ELECTRIC CORP

PURCHASE ORDER NO.: 4174461

BID COMPARISON:

\$1,949,324

**Contains Confidential Commercial Information**

COMPASS Complex Service PO  
4174461, 0

Proprietary and Confidential Page 1 of 48

**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4174461**

Revision **0**

PO Approved Date **06/20/2013**

Revision Date

Buyer **Elza Renazile**

Supplier: **VERDE ELECTRIC CORP**

**COMPASS 89 EDISON AVE  
MOUNT VERNON, NY 10550  
UNITED STATES**

Supplier

Contact:

**SWEENEY MICHAEL**

**(914) 664-7000**

Key

ConEd

Contact:

**Ka Cheung**

**718-204-4373**

**CHEUNGK@CONED.COM**

Ship To: **31-01 20TH AVE (BLDGS. 136 & 137)**

**ASTORIA, NY 11105**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10843 Immediate DESTINATION**

**Notes:** TLC Fire Alarm Upgrade

Furnish all labor, material, equipment, insurance and supervision to perform provides for the removal and replacement of the Fire Alarm System at The Learning Center in Queens, NY. The scope of work includes removal and replacement of the existing fire alarm system, installation of new wires and all associated connections.

No Vendor/Contractor can perform any work before a site specific HASP is approved is approved by Con Edison EH&S. eHasp shall be submitted within 14 calendar days of the award.

All work to be performed in accordance with Con Edison's Standard Terms and Conditions of Construction Contracts dated July 1, 2012, Con Edison's Supplemental Construction Contract Requirements (C-CM-004R1) dated June 7, 2011.

Michael Musto Chief Construction Inspector 917-567-5752

Sara Gherman Senior Engineer 917-440-5341

Rick Simonetti Construction Manager 718-204-4439

Timothy Carr EH&S Specialist 347-386-3749

The Purchase Order will be performed in accordance with the following:

Con Edison's invitation to RFQ Event # 98034,9 dated 4/3/13 and all documents referenced within.

COMPASS Complex Service PO

4174461, 0

Proprietary and Confidential Page 2 of 48

Con Edison's Standard Terms and Conditions of Construction Contracts dated July 1, 2012.

Special Conditions dated April 9, 2013 and all associated documents Verde Electric (Verde) has visited

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the site, reviewed the bid documents, and taken no exception. Verde signed Offer, Exception, Disclosure, and Compliance Form dated May 9, 2013, no exception.

Con Edison's Clarifications dated April 24, April 30, 2013 and May 2, 2013.

All Unit prices shall remain fixed and firm for the duration of the contract regardless of the actual quantities utilized.

Unit of Measure and Unit Price

- B1 Speaker/Strobe EA \$230
- B2 Manual Pull Station EA \$235
- B3 Conduit LF \$ 18
- B4 Cable LF \$ 4
- B5 Speaker EA \$230
- B6 Strobe EA \$230
- B7 Smoke Detector EA \$225
- B8 Duct Detector EA \$300
- C1 Wall Alternative LS (\$5,000)
- D1 Heat Detector EA \$285

- D2 Elevator Smoke Detector EA \$300
- D3 Monitor Module EA \$230
- D4 Fire Warden Station EA \$800
- D5 Tamper Switch/Water Flow Switch EA \$300
- D6 Fire Alarm Pressure Switch EA \$300
- D7 Weather proof strobe EA \$285
- D8 Weather proof combination speaker/strobe EA \$300

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

1 Needed:

07/05/2013

1 EACH 1320000.0

0

1,320,000.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 66,000.00

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

07/05/2013

1 EACH 1320000.0

0

1,320,000.00

Ship To:

Use the ship-to address at the top of page 1

Total: **1,320,000.00 (USD)**

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### **Terms and Conditions**

#### **Standard Terms**

##### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in

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Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Standard Purchase Order 4174461, 0

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal

## Contains Confidential Commercial Information

Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Standard Terms and Conditions for Construction Contracts

#### CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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### STANDARD TERMS AND CONDITIONS FOR

#### CONSTRUCTION CONTRACTS

July 1, 2012

-

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### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

1.Definitions. The following terms as used herein shall have the meanings stated:  
"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

## **Contains Confidential Commercial Information**

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

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"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all Standard Purchase Order 4174461, 0

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such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4.Price and Payment.



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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, Standard Purchase Order 4174461, 0

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among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained

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will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will

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ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death,

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occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4174461, 0

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9.Contractor's Performance.

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B.When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons

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in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and

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be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### **(i) Labor**

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(ii) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

#### **(iii) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue

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Book for Construction Equipment" or  
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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4174461, 0

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable

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collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work.

Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4174461, 0

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.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 T&M or other cost reimbursable basis.

B.Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C.For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

F.Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.



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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that

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demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, 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 to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control

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requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other

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contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23.Inspection and Tests and Correction of Defects.

A.Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4174461, 0

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i)halt the continuation of such Work; and
- (ii)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii)perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this 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 Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements

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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.

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### **25. Subcontracting.**

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six

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(6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document

and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4174461, 0

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

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A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4174461, 0

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4174461, 0

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to

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unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability,



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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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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 the asbestos abatement portion and the lead abatement portion of the Work, Asbestos

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor,

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Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison, Standard Purchase Order 4174461, 0

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965,

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Attention: Legal Services, 4th Floor.  
Certificates of Insurance identifying the Contract shall be sent to:  
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Consolidated Edison Company of New York, Inc.  
4 Irving Place, 17th Floor  
New York, N.Y. 10003

Attention: Purchasing Department  
Supplier Management Group (SMG)

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings)), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

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### 42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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 Standard Purchase Order 4174461, 0

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall

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belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

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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.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

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

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the

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other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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.

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited

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all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)(Date) (Date)

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ATTACHMENT NO. 18

CONTRACTOR: DONOFRIO GENERAL CONTRACTORS CORP

PURCHASE ORDER NO.: 4175520

BID COMPARISON:

\$1,697,700



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COMPASS Complex Service PO  
4175520, 2

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4175520**

Revision **2**

PO Approved Date **07/30/2013**

Revision Date **07/30/2013**

Buyer **Lisa Presotto**

Supplier: **DONOFRIO GENERAL CONTRACTORS CORP**

**COMPASS 202 28TH ST  
BROOKLYN, NY 11232  
UNITED STATES**

Supplier

Contact:

**LEONE VINCENT**

**(718) 832-5700**

Key

ConEd

Contact:

**Kosmas Toskos**

**917-939-5840**

**TOSKOSK@CONED.COM**

Ship To: **850 12TH AVENUE**

**NEW YORK, NY 10019**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7017 Immediate**

**Notes:** Per Oracle RFQ 126049 D'Onofrio General Contractors shall furnish supervision, labor, tools and materials to complete the scope of work for the renovation of the HP Control Room at the 74th St. Station.

The scope of work includes interior abatement, demolition, installation of conduit and cable, electrical work and all associated interior renovation work.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$1,387,000. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Price: \$1,387,000

Option Price per Clarification 3 dated 6/4/2013 to use MegaSeal SL 99-12600 System on elevation 51'-6". 1st Coat 10 mil dry film thickness Primer HSPC, 2ND Coat 30MIL Megaseal SI, and 3rd coat

Megaseal clear:

Option Price: \$87,000

COMPASS Complex Service PO

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Construction Schedule: 90 Calendar Days

This purchase order will be performed in accordance with & incorporates by reference the following:

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- All documents referenced in Oracle RFQ 126049, Construction Specification CE-MS-3500-22945-08 Package 4 REV CM and all associated Specifications, Contract Drawings and all other referenced drawings, and pictures.
  - Special Conditions dated 5/20/2013
  - Clarifications 1 -3 dated 5/24/2013, 5/31/2013 and 6/4/2013 respectively and all documents referenced therein.
  - Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/2012.
  - Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008
  - Contractor's submitted Compliance & Exception, Offer & Disclosure Forms (No Exceptions)
- No contractor can perform any work before a hasp is approved by EH&S.  
All prices and amounts on this order are expressed in USD

Line /  
Pay  
Item  
Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

2 Needed:  
09/25/2013  
1 EACH 1387000.0

0  
1,387,000.00  
LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT  
Max Retainage Amount: 69,350.00  
Retainage Rate: 10%  
2-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT

Needed:  
09/25/2013  
1 EACH 1387000.0

0  
1,387,000.00  
Ship To:  
Use the ship-to address at the top of page 1

Total: **1,387,000.00 (USD)**  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**  
**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**STANDARD TERMS AND CONDITIONS**

**FOR**  
**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

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

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

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

"Contract" -The contract between Con Edison and Contractor 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, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms 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 acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents,

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including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4. Price and Payment.

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase

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order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

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

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent

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to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay 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 Contractor'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.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal

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laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4175520, 2

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9.Contractor's Performance.

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and



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facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. 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.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Standard Purchase Order 4175520, 2

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### **(i) Labor**

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

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### (ii)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### (iii)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. 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 modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14. Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4175520, 2

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify 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 any and all

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liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify 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 any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4175520, 2

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. 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 T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor 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 Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor 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 T&M basis shall be subject to Article 12 (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.

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F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, 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, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor 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, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor'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 Contractor 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,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor 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, Contractor 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 in 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 Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; 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. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably

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detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost Standard Purchase Order 4175520, 2

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor'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 for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the 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, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor 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 Contractor 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.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor'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 Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully

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set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, 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. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Standard Purchase Order 4175520, 2

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction 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 is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor 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 Standard Purchase Order 4175520, 2

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fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

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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. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative 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, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4175520, 2

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to,



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or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25.Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

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

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor 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 this Contract or the Work, and the Contractor 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 that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a

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fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

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

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4175520, 2

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no

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additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4175520, 2

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each

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change order thereunder.

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B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work 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. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4175520, 2

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor 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. Contractor 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 harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that

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the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, 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, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, 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). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense 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.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation 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 \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 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. There shall be no policy deductibles without 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 Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor 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 the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, 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.

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E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Standard Purchase Order 4175520, 2

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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 Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, 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 Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. 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 Work, Contractor 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 and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor 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, Contractor 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 Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison, Standard Purchase Order 4175520, 2

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the

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Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

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

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4175520, 2

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for

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default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled 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 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with 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 Standard Purchase Order 4175520, 2

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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



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extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

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

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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.

43.Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. 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 Contractor's employees.

44.Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45.Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

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

47.Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take

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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.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted 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. Standard Purchase Order 4175520, 2

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

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor 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. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor 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. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or

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on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, 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, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly 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). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4175520, 2

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the

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Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security)

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agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4175520, 2

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or 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 Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)