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

ATTACHMENT NO. 1

CONTRACTOR: SCHNEIDER ELECTRIC USA INC

PURCHASE ORDER NO.: 4270895

BID COMPARISON:

\$2,450,240

\$2,915,980

\$3,745,549

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

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **Standard Purchase Order**

Order **4270895**

Revision **0**

PO Approved Date **02/26/2014**

Revision Date

Buyer **Deidre Thompson**

Supplier: **SCHNEIDER ELECTRIC USA INC**

**1415 S ROSELLE RD**

**PALATINE, IL 60067**

**UNITED STATES**

Supplier

Contact:

**KOWALCZYK JAMES**

**2034664504#2034**

Key

ConEd

Contact:

**Deidre Thompson**

Ship To: **UNION AVE (HARRISON ST SUBSTA)**

**HARRISON, NY 10528**

**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

**6321 Net 30 PREPAID AND**

**ADDED**

**DESTINATION**

**Notes:** This purchase order is for Schneider Electric USA, Inc. (Schneider) to furnish all equipment, labor and material required to retrofit 31 existing circuit breakers to modern, draw out type circuit breakers.

This purchase order is governed by the following terms and conditions, which are incorporated herein by reference:

1)Oracle Bid Event #438087 and all documents referenced therein.

2)CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS July 1, 2012 As modified October 22, 2012, for Schneider Electric USA, Inc.

3)CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. STANDARD TERMS AND CONDITIONS FOR PURCHASE OF EQUIPMENT July 1, 2012 As modified October 22, 2012, for Schneider Electric USA, Inc.

4)Technical details, pricing, and delivery only from Schneider to Con Edison under Schneider's quote dated December 18, 2013, which was received in response to Con Edison Bid Event #438087.

5) Appendix A attached hereto

6) Con Edison Gift Policy

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7)Disclosure Form, dated December 19, 2013

8)The following Con Edison specifications and drawings, standards and specifications:

- CE-ES 4109-41 REV. 0, dated August, 2012

- Drawing : Harrison-658

- Drawing : A180366-19

- Harrison Attachment A

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- Compliance form Attachment B to Spec. No. CE-ES 4109-41 Rev.0 August, 2012

I. The Payment schedule as agreed upon between Con Edison (CE) and Schneider on January 21, 2014 is as follows:

- 20% of cost of major material upon purchase order issuance;
- 15% of cost of major material upon 1st measurement outage;
- 15% of cost of major material upon drawing submittal;
- 25% of cost of major material upon delivery in 2014;
- 25% of cost of major material upon delivery in 2015.

II. Mobilization Cancellation:

- charges for crew prior to leaving East Haven factory:
- notification 24 hours or greater-No Charge
- notification 12 hours to 23 hrs 59 minutes -\$6,999
- notification 0 hours to 11 hrs 59 minutes-\$12,999

III. Project Schedule

The following schedule has been developed :

- Engineering/Manufacturing schedule : At project schedule meeting.
- Detail Calculations and stress analysis for the 2 weeks after notification of purchase order. Existing bus and the supporting structure and any changes required to meet the 63 kA fault duty: 2 weeks after notification of purchase order.
- Outline, wiring, nameplate drawings and schematic diagrams for record. General arrangement drawings showing shipping and assembled dimensions, weights and where customer connections are required: 12 weeks after notification of purchase order.
- Instruction Books : 16 weeks after notification of purchase order. Vendor will insert final drawings and test reports into instruction books as they are completed.
- Equipment test reports: 4 weeks after notification of tests, but no later than two weeks before the shipment of equipment.
- Equipment purchased and available for installation: Six (6) months after issuance of PO.

All delivery dates shall be confirmed with the Substation Operations Department and subject to their approval.

Point of contact: Project Manager Nicholas Febrizio;212-244-6455 (Tel.); Email-Febrizion@coned.com

Reference Documents: 658-0-98.pdf

180366-0-19.pdf

CE-ES-4109\_41\_Harrison.pdf

HARAttachmentA09112013.pdf

12.19.13 Schneider Disclosure form.pdf

Completed Compliance Con Ed Harrison.pdf

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12.18.13 Schneider Priced Proposal.pdf

Completed Compliance Con Ed Harrison.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description	Supplier Part#	Delivery Date/Time	Quantity	UOM	Unit Price
(USD)					
Amount					
(USD)					

Amount

(USD)

22 Promised:

05/30/2014

1 EACH 391725.00 391,725.00

20% of cost of major material upon purchase order issuance

Ship To:

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

23 Promised:

05/30/2014

1 EACH 293793.75 293,793.75

15% of cost of major material upon first measurement outage

Ship To:

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

24 Promised:

05/30/2014

1 EACH 293793.75 293,793.75

15% of cost of major material upon drawing submittal

Ship To:

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

25 Promised:

05/30/2014

1 EACH 489656.25 489,656.25

25% of cost of major material upon validated receipt in 2014 (Validated receipt is documented and confirmed by photos and nameplates of equipment with serial numbers)

Ship To:

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

26 Promised:

04/01/2015

1 EACH 489656.25 489,656.25

25% of cost of major materials -Balance of major materials will be paid for upon delivery in 2015

Ship To:

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

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

(USD)

Amount

(USD)

27 Promised:

05/30/2014

4 EACH 11219.00 44,876.00

INSTALL KITS -Bus Section Normal (1N, 1S, 3N, 3S) total of 4 sections

Ship To:

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

28 Promised:

05/30/2014

2 EACH 13022.00 26,044.00

INSTALL KITS -Bus Section extended (2N, 2S) total of 2 sections

Ship To:

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

29 Promised:

05/30/2014

2 EACH 1764.00 3,528.00

INSTALL KITS -Bus Section ext Partial (4N, 4S) total of 2 sections

Ship To:

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

30 Promised:

05/30/2014

1 EACH 258.00 258.00

Total C1 (partial) Install Kits (1 section) 1200 AMP

Ship To:

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

31 Promised:

05/30/2014

1 EACH 258.00 258.00

Total C2 (partial) Install Kits (1 section) 1200 AMP

Ship To:

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

32 Promised:

05/30/2014

4 EACH 59331.00 237,324.00

TOTAL Installation Labor Bus Section Normal (1N, 1S, 3N, 3S) full 4 sections

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Line 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

33 Promised:

05/30/2014

1 EACH 258.00 258.00

Total C3 (partial) Install Kits (1 section) 1200 AMP

Ship To:

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

34 Promised:

05/30/2014

2 EACH 71048.00 142,096.00

TOTAL Bus Section Extended (Full) (2N, 2S) (2 sections)

Ship To:

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

35 Promised:

05/30/2014

2 EACH 15452.00 30,904.00

TOTAL Bus Section Extended (partial) (4N, 4S) (2 sections)

Ship To:

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

36 Promised:

05/30/2014

1 EACH 2015.00 2,015.00

Total C1 (partial) installation (1 section) 1200 AMP

Ship To:

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

37 Promised:

05/30/2014

1 EACH 2015.00 2,015.00

Total C2 (partial) installation (1 section) 1200 AMP

Ship To:

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

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

(USD)

Amount

(USD)

38 Promised:

05/30/2014

1 EACH 2015.00 2,015.00

Total C3 (partial) installation (1 section) 1200 AMP

Ship To:

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

Total: **2,450,216.00 (USD)**

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. FOR PURCHASE OF EQUIPMENT July 1, 2012 As modified October 22, 2012, for Schneider Electric USA, Inc.**

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

**STANDARD TERMS AND CONDITIONS**

**FOR**

**PURCHASE OF EQUIPMENT**

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July 1, 2012

As modified October 22, 2012, for Schneider Electric USA, Inc.

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**STANDARD TERMS AND CONDITIONS FOR PURCHASE OF EQUIPMENT**

2. . 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" Standard Purchase Order 4270895, 0 Proprietary and Confidential Page 11 of 54 ).

"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 acknowledgment 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.**

. 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.

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

5. Payment

A.Unless otherwise specified in the Contract, payment shall be made by Con Edison to Seller within thirty (30) days after receipt and processing of proper invoices with required supporting documentation.

B.Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department after the delivery of the equipment or payment of the services to which the payment applies, in such detail and with such supporting documentation as required by the Contract or as may reasonably be required by Con Edison for tax and regulatory purposes. Proofs of costs shall be submitted for cost reimbursable items. If the contract provides for any services to be rendered on an hourly rate basis, invoices shall include the number of hours worked and the hourly rate for each person performing services as well as the total amount invoiced, Standard Purchase Order 4270895, 0

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and shall be accompanied by signed time sheets and any other data or supporting

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documentation reasonably required by Con Edison.

C. Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery or other performance.

D. The acceptance by Seller of final payment, except for any express written reservation of rights, shall be and shall operate as a release of Con Edison from all claims of and all liability to Seller for all things done or furnished in connection with the Contract and for every act and neglect of Con Edison and others for whom Con Edison is or may be responsible, relating to or arising out of the Contract. However, no payment, final or otherwise, shall operate to release Seller from any obligations under the Contract.

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

### **6. Taxes**

A. **Sales Tax.** Except as otherwise provided in the Contract, the price does not include any federal, state or local sales, use or other similar tax which may now or hereafter be applicable to the purchase by Con Edison of the equipment or services furnished hereunder, and Con Edison agrees to pay or reimburse Seller for any such tax. Con Edison shall have the right to direct the basis on which any such taxes shall be paid or contested and to control any contest and shall reimburse the Seller for any interest, penalties or expenses Seller may be required to pay on account of any such direction or contest. Conducting any hearings or litigation regarding a tax dispute shall be Con Edison's responsibility, but Seller shall cooperate and assist Con Edison therewith.

B. **Payroll Taxes and Contributions.** Seller assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the performance of the Contract.

C. **Import Taxes (Tariffs and Duties).** The prices include any and all import taxes, including, but not limited to, regular, special, countervailing and antidumping duties imposed at any time on the equipment purchased hereunder, whether denominated duties, tariffs, surcharges, imposts, tolls or otherwise. Seller shall indemnify and hold harmless Con Edison and its affiliates (including O&R) from and against any liability arising out of the imposition of any such import taxes. In the event that a notice of the initiation of an antidumping or countervailing duty investigation or proceeding is published in the Federal Register relating to the kind of equipment and the country of origin involved in the purchase hereunder, Con Edison shall have the right at any time thereafter to cancel the purchase by written notice, without incurring any liability therefor. The exercise or nonexercise of this right of

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cancellation shall not affect any right hereunder to be indemnified and held harmless.

. Seller shall deliver the equipment and perform any services to be furnished in accordance with the delivery dates and any schedule of performance stated herein. It is understood and agreed by Seller that **TIME IS OF THE ESSENCE OF THE CONTRACT** and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by Con Edison of revised schedules from Seller during the performance hereunder shall not be deemed a waiver of the contract completion date.

. 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.

. Con Edison shall have the right, for its convenience and by written notice, to suspend all or part of Seller's performance hereunder at any time. Seller shall, as soon as possible, resume any suspended performance when so



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

. 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, and will comply with and be usable in compliance with all applicable laws and regulations. Seller further warrants that any services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practices. Should any failure to meet any of the warranties stated herein appear within twelve (12) months after commencement of commercial operation of the equipment or eighteen (18) months after acceptance of the equipment by Con Edison, whichever first occurs, Seller shall, upon notice from Con Edison, repair or replace the equipment and reperform the services not conforming to the foregoing warranties, promptly and without expense to Con Edison. In the event of a failure of Seller to promptly remedy any breach of warranty, Con Edison may correct the deficiencies and charge Seller for the cost thereof. The aforesaid warranties shall survive acceptance of, and, payment for equipment and services furnished hereunder. After any equipment or services have been repaired, replaced or redone pursuant to the foregoing warranties, they shall be subject anew to the original warranties. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR Standard Purchase Order 4270895, 0

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IMPLIED WARRANTIES (EXCEPT WARRANTIES OF TITLE). THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE ARE EXPRESSLY EXCLUDED.

. Con Edison reserves the right at any time to make changes in the services to be performed or in any specifications, drawings and data incorporated herein, the method of shipment or the time of delivery. Any such changes shall be directed in writing. If any such change causes an increase or decrease in the cost of or the time required for performance hereunder, an equitable adjustment shall be made in the contract price or schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Seller shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Con Edison, without prejudice to its right to an equitable adjustment in respect thereof. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract revision or modification signed and issued by Con Edison (electronically or in print form).

### 12. Time and Material and Cost Reimbursable Work

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of work done on a time and material or other cost reimbursable basis.

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

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

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

D. All work performed on a time and material basis shall be subject to the Article 10 (Warranties) above.

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

### 13. Claims

A. The only claims that may be made by Seller are claims for (i) providing services or materials beyond the

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scope of the Purchase Order that are not covered by a written and signed change order (hereafter "Standard Purchase Order 4270895, 0

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Non-Contract Work"), and (ii) the increased cost of performing under the Contract caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 8, no claims for damages or additional costs on account of delay shall be permitted.

B. For each claim for Non-Contract Work, as defined in A(i) of this Article, Seller must give written notice to Con Edison's designated representative within five (5) days of when the Seller began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in A(ii) of this Article, Seller must give written notice to Con Edison's designated representative within five (5) days of Seller's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison, identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Seller believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date the Seller learned of the misrepresentation.

C. For claims for which Seller has given timely notice, Seller must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph B of this Article, Seller must begin submitting weekly detailed itemizations of such costs to Con Edison.

(i) For each claim for Non-Contract Work, as defined in A(i) of this Article, these detailed records shall include:

(a) The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

(b) The nature and quantity of any materials, plant and equipment furnished or used on connection with the performance of such work and from whom purchased or rented.

(ii) For each claim for Increased Costs, as defined in A(ii) of this Article, these detailed records must include:

(a) The date the Increased Costs were incurred;

(b) The name, title, trade local, and number of the workers who performed the work whose costs were increased;

(c) The price in Seller's bid for the performance of the work that had its cost increased, the Standard Purchase Order 4270895, 0

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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.

. 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

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

. 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.

. 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.

. 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 Standard Purchase Order 4270895, 0

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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.

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

. To the fullest extent allowed by law, Seller agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons or damage to property, including the property of Con Edison or O&R, or statutory or administrative fines, penalties or forfeitures, resulting, in whole or in part, from,

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or connected with, the performance of the Contract by Seller, any subcontractor, their agents, servants, representatives or employees, and including claims, loss, damage and liability arising from the partial negligence of Con Edison or 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.

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

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A. Employment related insurance

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

(ii) Employers' Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupational diseases (with a limit of not less than \$1,000,000 per employee).

(iii) Where applicable, insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

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

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

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Seller or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

D. Where performance involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by Seller or any subcontractor, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.

E. For asbestos abatement and lead abatement work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Standard Purchase Order 4270895, 0

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Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, the Seller shall require the subcontractor to name Seller, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the performance hereunder includes any engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the performance to be furnished under the Contract.

Seller shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least thirty (30) days

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prior to the effective date of cancellation of the insurance or of any reduction in policy limits. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

At least three days prior to commencing performance hereunder Seller shall furnish Con Edison with copies of the Certificate(s) of Insurance covering all required insurance, signed by the insurer or its authorized representative, and Seller shall provide that the required insurance has not been cancelled or reduced without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. are additional insureds with respect to all coverages enumerated in paragraph B of this Article with respect to the performance hereunder and completed operations. Con Edison shall have the right, upon request, to require the Seller to furnish Con Edison with a copy of the insurance policy or policies required under paragraphs A, B, C, D, E and F of this Article, when such are required by court order regarding a claim.

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

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

Certificates of insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, NY 10003

Attention: Purchasing Department

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Supplier Management Group (SMG)

. 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.

. In the event Seller is in default of any of its obligations under the Contract, Con Edison shall have the right, by written notice to Seller, to cancel the Contract, in whole or in part, for such default. Seller shall be deemed to be in default hereunder if Seller is in default of any of its obligations under the Contract or if Seller by a statement or conduct indicates that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof). In the event of cancellation for default hereunder, Con Edison shall have all rights and remedies provided by law and under the Contract. In addition, in such event Con Edison may retain from any money otherwise due for equipment delivered and services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all direct 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 by Seller in connection with Work (that will only

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work exclusively with the proprietary system of Con Edison), ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Seller hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Seller hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights Standard Purchase Order 4270895, 0

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related thereto. Upon the request of Con Edison, Seller shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Seller in connection with Work ordered for O&R (hereinafter "O&R Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Seller hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Seller hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Seller shall execute any documents that O&R deems necessary to effectuate such assignments.

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

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived exclusively for O&R or Con Edison by Seller, its officers, employees, agents or subcontractors in connection with services ordered, paid by or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Seller shall disclose immediately to O&R all O&R Work Product upon its conception. Seller hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all Standard Purchase Order 4270895, 0

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right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Seller shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Seller has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Seller, and Seller hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Seller shall not cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

E.To the extent any documents or materials created or otherwise prepared by Seller in connection with the Contract are not considered Con Edison Materials or Con Edison Work Product, Seller hereby grants to Con Edison, a non-exclusive, perpetual, paid-up license to use such documents and materials in its business.

F.To the extent any documents or materials created or otherwise prepared by Seller in connection with the Contract are not considered O&R Materials or O&R Work Product, Seller hereby grants to O&R, a non-exclusive, perpetual, paid-up license to use such documents and Materials in its business.

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

. 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.

. 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.

. Seller hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of the Contract or the performance of the Contract, and Seller shall make all of its books, records, and accounts, relating to the Contract, Standard Purchase Order 4270895, 0

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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,

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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.

. 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.

. 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.

. 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.

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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.

. Seller shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of any performance or work of any other sellers or contractors, clean up and remove frequently all refuse, rubbish, scrap materials, and debris so that at all times the work site shall present a neat, orderly and workmanlike appearance and, before final payment, remove all surplus material, falsework, and temporary structures. If in the opinion of Con Edison, Seller has failed to comply with any provisions of this Article, Con Edison may order any or all performance suspended until the condition is corrected, and costs associated therewith shall be borne by the Seller.

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

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

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

### **34. Protection of Persons and Property; Notice of Accidents**

A. When Seller performs hereunder, Seller shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. Seller shall at its own expense design, furnish, and erect such enclosures, barricades, platforms, scaffolds, planking of floor openings, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Seller shall, and shall cause any subcontractor, their agents, servants and employees, while on or about the work site, to observe and comply with all fire, safety, hazard, "No Smoking", and other rules and regulations prescribed by Con Edison or legally in effect at the time.



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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 Standard Purchase Order 4270895, 0

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proceeding in connection therewith, to preclude, prejudice or limit Con Edison's right to receive indemnification or contribution from Seller.

. 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.

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

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

. 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.

. 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.

. 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.

. 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.

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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

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resulting from any act or omission of the parties in any way connected with the Contract.

### **43. Submission to Jurisdiction/Choice of Forum**

A. Seller hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Seller agrees that service of process on the Seller in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Seller at the address shown in the Contract or at the address of any office actually maintained by Seller, or by actual personal delivery to Seller. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Seller consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Seller also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. The other Con Edison affiliates and other non-parties referenced in Articles 15, 18, 19, 20, 34 and 46, are third party beneficiaries of the Contract and may enforce those Articles and any articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

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

46. Gift Policy and Unlawful Conduct. Seller is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Seller, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the purchase of equipment or any services to be provided under the Contract. Furthermore, Seller is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and Seller or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Seller represents, warrants, and covenants that Seller, its agents, employees, representatives and subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Seller shall be in default under the Contract and all other contracts between Con Edison and Seller and (a) Con Edison may, in its sole

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

47. Consequential Damages. Anything herein notwithstanding, in no event shall either Con Edison or Seller be liable to the other for special, indirect, incidental or consequential damages under a purchase order hereunder, including lost revenue or lost profits, even if the other party has been advised of the possibility of such damages. For purposes of clarity, any damages sought under a claim for indemnification hereunder are direct damages.

48. Limitation of Liability. In any event, Seller's aggregate liability for any and all claims, losses or expenses arising out of a purchase order hereunder, or out of any goods or services furnished under a purchase order hereunder,

## Contains Confidential Commercial Information

whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited to two times the amount of the applicable purchase order however, the foregoing limitation shall not apply to Seller's indemnification of third-party claims or breaches of confidentiality or failure to comply with the compliance with law obligations hereunder.

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### **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. STANDARD TERMS AND CONDITIONS FOR SERVICE CONTRACTS July 1, 2012 As modified October 22, 2012, for Schneider Electric USA, Inc.**

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### **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. STANDARD TERMS AND CONDITIONS**

#### **FOR**

#### **SERVICE CONTRACTS**

July 1, 2012

As modified October 22, 2012, for Schneider Electric USA, 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 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 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 Standard Purchase Order 4270895, 0

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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

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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 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 Standard Purchase Order 4270895, 0

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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.

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 Standard Purchase Order 4270895, 0

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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

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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. 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.

THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES (EXCEPT WARRANTIES OF TITLE). THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE ARE EXPRESSLY EXCLUDED.

11. Changes. Con Edison reserves the right at any time to make changes in the services to be performed or in any 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

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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 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

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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.

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 Standard Purchase Order 4270895, 0

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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 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 Standard Purchase Order 4270895, 0

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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

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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 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 Standard Purchase Order 4270895, 0

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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:



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

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.

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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 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, and including claims, losses, damages and liabilities arising from the partial negligence of Con Edison, or O&R. 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 Standard Purchase Order 4270895, 0

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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

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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.

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.)

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 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 Standard Purchase Order 4270895, 0

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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 thirty (30) days' prior to the effective date of cancellation of the insurance or of any reduction in coverage 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 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,

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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, when such are required by court order regarding a claim.

To the fullest extent allowed by law, the 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 partial liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of Contractor's services.

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 arising out of the performance of the work, including injury caused by the partial negligence of Con Edison or O&R and notwithstanding any statutory prohibition 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 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 direct 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,

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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

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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, 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 any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product"), and created in connection with the work for Con Edison pursuant to this Agreement and that will only work exclusively with the proprietary system of Con Edison, 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

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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") and created in connection with the work for Con Edison pursuant to this Agreement and that will only work exclusively with the proprietary system of Con Edison 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

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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.

E.To the extent any documents or materials created or otherwise prepared by Contractor in connection with the Contract are not considered Con Edison materials or Con Edison Work Product, Contractor hereby grants to Con Edison, a non-exclusive, perpetual, paid-up license to use such documents and materials in its business.

F.To the extent any documents or materials created or otherwise prepared by Contractor in connection with the Contract are not considered O&R materials or O&R Work Product, Contractor hereby grants to O&R, a non-exclusive, perpetual, paid-up license to use such documents and materials in its business.

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.

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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 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 relating to the Contract, 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.

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30. Quality Assurance. To further assure compliance with warranties stated herein, the Contractor shall meet the Standard Purchase Order 4270895, 0

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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.

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 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.

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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. 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 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.

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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 Standard Purchase Order 4270895, 0

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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 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.

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42. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim Standard Purchase Order 4270895, 0

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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 44 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 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.

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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.

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



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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

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(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).

50. Consequential Damages. Anything herein notwithstanding, in no event shall either CECONY or Contractor be liable to the other for special, indirect, incidental or consequential damages under a purchase order hereunder, including lost revenue or lost profits, even if the other party has been advised of the possibility of such damages. For purposes of clarity, any damages sought under a claim for indemnification hereunder are direct damages.

51. Limitation of Liability. In any event, Contractor's aggregate liability for any and all claims, losses or expenses arising out of a purchase order hereunder, or out of any goods or services furnished under a purchase order hereunder, whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited to two times the amount of the applicable purchase order however, the foregoing limitation shall not apply to Contractor's indemnification of third-party claims or breaches of confidentiality or failure to comply with the compliance with law obligations hereunder.

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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)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To Standard Purchase Order 4270895, 0

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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 Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Standard Purchase Order 4270895, 0

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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

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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 title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Standard Purchase Order 4270895, 0

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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)