

**ESCO OPERATING AGREEMENT
AND
RETAIL TRANSMISSION SERVICE AGREEMENT**

This agreement (“Agreement”), entered into by Consolidated Edison Company of New York, Inc., a New York corporation having an office for the transaction of business at 4 Irving Place, New York, New York 100 03 (“Con Edison”); _____, a _____ corporation, having an office for the transaction of business at _____ (“Energy Service Company” or “ESCO”); and the Retail Access Customers (“Customers”) who purchase electric energy from ESCO pursuant to Con Edison’s Retail Access Program;

WITNESSES

WHEREAS, Con Edison has established a retail access program (the “Retail Access Program”), as described in its Schedule for Retail Access, P.S.C. No. 2 – Retail Access (“Retail Access Schedule”) and its Retail Access Implementation Plan and Operating Procedure (the “Operating Procedure”), both of which are on file with the New York State Public Service Commission (“PSCNY”) together with Con Edison’s Schedule for Electricity Service, PSC No. 9 – Electricity (“Full Service Schedule”);

WHEREAS, ESCO is an eligible supplier under the Retail Access Program and desires to supply electric energy and capacity to Customers;

WHEREAS, ESCO desires to act as agent of Customers in contracting for, scheduling, and administering transmission service;

WHEREAS, the New York State Independent System Operator (“NYNYISO”) has assumed control of and responsibility for transmission facilities in New York State in accordance with the NYISO Open Access Transmission Tariff (“NYISO OATT”);

WHEREAS, Con Edison has agreed to support the NYISO in providing Customers with transmission service in conjunction with Customer’s participation in the Retail Access Program in accordance with the terms and conditions of (i) this Agreement, (ii) Con Edison’s open access transmission tariff, FERC Electric Tariff, Original Volume No. 1 (“OATT”), and (iii) the NYISO OATT; and

WHEREAS, each Customer has authorized ESCO, as Customer’s agent, to execute this Agreement on Customer’s behalf;

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, Con Edison and ESCO agree to the provisions of Articles I, II, and IV of this Agreement, and Con Edison and Customers agree to the provisions of Articles I, III and IV of this Agreement.

ARTICLE I COMMON TERMS AND CONDITIONS

1.1 Incorporation By Reference

The terms and conditions of the NYISO OATT and Con Edison's OATT are fully incorporated in this Agreement except as is otherwise expressly provided herein. In the event of any conflict, the terms of this Agreement shall govern with respect to matters provided herein.

1.2 Term

As between Con Edison and ESCO, this Agreement is effective as of _____, _____, provided that ESCO has contracted with the NYISO for transmission and ancillary services pursuant to the NYISO OATT in connection with ESCO's sales of electricity to Customers, and will remain in effect until terminated in accordance with its terms, the Operating Procedure, or an order of the FERC or the PSCNY. This Agreement shall be effective between Con Edison and a Customer as of the date on which Customer commences the purchase of electric energy from ESCO and shall remain effective as to each Customer as long as Customer purchases energy from ESCO; provided that Con Edison may terminate services under this Agreement as to particular Customers in accordance with General Rule III(15) of the Full Service Schedule and re-establish them in accordance with General Rules III(19) and III(20) of the Full Service Schedule.

ARTICLE II AGENCY ARRANGEMENT

2.1 ESCO Obligations

ESCO shall act as Customer's agent for purposes of forecasting energy requirements and scheduling transmission service in accordance with Section 36.2 of the NYISO OATT.

2.2 Representations and Warranties.

ESCO represents that the information in Appendix No. 1 (ESCO Information Form) is correct, and ESCO will promptly inform Con Edison of any changes in such information.

2.3 Retail Access Customer Records

ESCO will obtain and retain authorization from each Customer to be served and make the authorization available for audit by a third party for a period commencing with the creation or receipt of such record and ending one year from the date of termination of service to that customer.

**ARTICLE III
TRANSMISSION AND ANCILLARY SERVICES**

3.1 Nature of Service

Con Edison will support the NYISO in providing Customers with transmission service.

3.2 Commencement of Service

Each Customer must qualify as an eligible Retail Access Consumer under the Retail Access Plan in order to receive service under this Agreement. Customers shall obtain service under this Agreement by contracting with ESCO for the purchase of energy and by causing ESCO to enroll Customer in the Retail Access Program in accordance with Section 4 of the Operating Procedure. Customers shall not execute individual service agreements for transmission service, but shall authorize ESCO to act as Customer's contracting agent for purposes of this Agreement. Each ESCO must contract for service both under this Agreement and under the NYISO OATT.

3.3 Creditworthiness

Customers shall not be obligated to provide a security deposit solely in connection with service under this Agreement, but shall comply with the requirements set forth in General Rule III(1) of Con Edison's Full Service Schedule for creditworthiness and security deposits in conjunction with delivery services.

3.4 Rates and Charges for Transmission Service

In accordance with Part IV of the NYISO OATT, Customers shall pay Con Edison the transmission service charge and scheduling charge set forth in Con Edison's OATT, Attachment K, Appendices 2 and 3. The charge will be the per unit rate for the customer's service classification multiplied by the demand or amount of energy consumed by the customer, as appropriate. ESCO will pay to the NYISO other transmission and ancillary service charges imposed by the NYISO OATT in connection with transmission of its energy to Customers.

3.5 Metering, Billing, and Payment

Retail transmission service will be metered at the point of service termination in accordance with General Rule III(8) of the Full Service Schedule and Sections 7.1 and 7.2 of the Operating Procedure. Con Edison will administer each Customer's account and render to each Customer (or to an agent which Customer may designate in accordance with procedures established by the PSCNY) a single combined bill that includes the transmission service charge and charges for distribution service, pursuant to Section 5 of the Operating Procedure.

The provisions of General Rules III(11) and (15) of the Full Service Schedule are also applicable with respect to payment matters such as backbills, estimated bills, plural-meter billing, tampered equipment, inability to gain access, deferred payment agreements, late payment charges, and interest on overpayments. In particular, if Con Edison determines that service to ESCO's Customer is unmetered, in whole or in part, Con Edison will retroactively bill Customer for the

unmetered transmission service at a rate equal to the applicable transmission service charge. Such charge will be in addition to any other retroactive charges imposed by the NYISO OATT and the Retail Access Schedule. If the unmetered condition is the result of tampering or other interference with the meter or the Company facilities necessary for the receipt of service, the Company will also charge Customer a late payment charge.

3.6 Dispute Resolution

Any dispute arising with respect to Article III of this Agreement will be resolved pursuant to the complaint procedures of the Federal Energy Regulatory Commission.

**ARTICLE IV
MISCELLANEOUS**

4.1 Customer Accounts

Con Edison will provide ESCO with the applicable billing determinants of ESCO's Customers and such other information as detailed in the Operating Procedure. Such information will be provided in accordance with the procedures set forth in the Operating Procedure and may not be used by ESCO for unrelated purposes.

4.2 Notices

Any notice to be given by ESCO or Con Edison to each other hereunder will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that party (or at such other address as that party may from time to time designate by giving notice thereof).

To Con Edison: Consolidated Edison Company of New York, Inc.
Retail Choice Operations
4 Irving Place, 9th Floor
New York, New York 10003
Attention: Section Manager

To ESCO: _____

Attention: _____
Phone No.: _____

4.3 Amendments

Notwithstanding any provision of this Agreement, Con Edison may at any time propose and file with the FERC and/or PSCNY changes to the rates, terms, and conditions of its OATT, Retail Access Schedule, and/or major changes to the Operating Procedure. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the FERC or PSCNY.

4.4 Assignment

No Customer may assign its rights or obligations under this Agreement. ESCO may assign, transfer, or otherwise dispose of this Agreement or any of its rights, duties or obligations hereunder to a party that is an ESCO eligible to provide service under the Retail Access Program (hereafter referred to as the "assignee") upon prior written notice to Con Edison of the assignment that includes the assignee's acceptance of the rights, duties and obligations hereunder. For the purposes of this Agreement, an assignment, transfer or other disposition will include, but not be limited to, (i) any restructuring of the assets of ESCO, (ii) any acquisition, consolidation, merger or other form of combination of ESCO by, into, or with any person or entity, or (iii) any change in ownership interest of 25 percent or more. Any assignment, transfer or other disposition of this Agreement, or any rights, duties or obligations hereunder, by ESCO, except as specifically permitted herein, will be null and void.

4.5 Prior Agreements Superseded.

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, supersedes any and all previous understandings between the parties with respect to the subject matter hereof, and binds and inures to the benefit of the parties, their successors and permitted assigns.

4.6 Waiver and Modification.

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the parties hereto or their agents. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

4.7 Applicable Law and Forum.

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of New York except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. ESCO and Customers irrevocably consent that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York or a federal court of the United States of America located in the State of New York, County of New York. ESCO and Customer irrevocably waive any objection that they may now or in the future have to the State of New York, County of New York as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

4.8 Severability.

If one or more provisions herein will be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

4.9 Agency.

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between Con Edison and the other parties or to impose any such obligation or liability upon Con Edison.

4.10 Not for the Benefit of Non-Parties

This Agreement is for the benefit of the parties hereto and not for the benefit of non-parties.

IN WITNESS WHEREOF, Con Edison, ESCO, and the Customers have executed this Agreement.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____
Name:
Title:

[Insert ESCO's Name]

By: _____
Name:
Title: