

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement, made as of _____, is by and between _____ with offices located at _____ and Consolidated Edison Company of New York, Inc. ("Con Edison"), a New York corporation with offices located at 4 Irving Place, New York, New York 10003

WHEREAS, Con Edison and _____ (collectively the "PARTIES", individually a "PARTY") are in confidential discussions and negotiations relating to a possible business relationship (the "PROJECT");

WHEREAS, the PARTIES hereto have data, analysis, plans, and/or other documents or information relating to the PROJECT (such data, analysis, plans, and/or other documents or information are collectively referred to herein as "INFORMATION"), which INFORMATION each PARTY hereto, as to its INFORMATION considers to be proprietary and/or confidential;

WHEREAS, each PARTY hereto is interested in receiving and evaluating the INFORMATION of the other PARTY for the purposes of determining the desirability of the PROJECT, the proposed new business relationship between the PARTIES and/or providing or receiving a proposal regarding the PROJECT (the "EVALUATION"); and

WHEREAS, each PARTY hereto desires to assure that INFORMATION disclosed by it (the "DISCLOSING PARTY") to the other PARTY hereto (the "RECEIVING PARTY") is properly protected, held confidential and used solely for the purpose of the EVALUATION.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, the PARTIES hereto agree as follows:

1. INFORMATION may be disclosed in written, electronic or oral form. INFORMATION shall not be deemed confidential and/or proprietary and subject to this Confidentiality Agreement unless, in the case of written or electronic disclosures, it is clearly marked "Confidential" or, in the case of oral disclosures, it is identified at the time of disclosure as being confidential and redisclosed in writing within ten (10) days of such oral disclosure and clearly marked "Confidential."

2. Subject to Paragraphs 3 and 6 hereof, and provided that the requirements of Paragraph 1 have been satisfied, the RECEIVING PARTY shall hold any INFORMATION furnished to it by the DISCLOSING PARTY (such INFORMATION, together with all copies thereof and all copies of all documents and of all other media that contain any such INFORMATION or any extracts thereof, is referred to herein as "CONFIDENTIAL INFORMATION") in strict confidence, shall not disclose such CONFIDENTIAL INFORMATION to any other person or entity, shall use at least the same degree of care to avoid publication or dissemination of such CONFIDENTIAL INFORMATION as it employs (or would employ) with respect to its own confidential information which it does not (or would not) desire to have published or disseminated, and shall use such CONFIDENTIAL INFORMATION only for the purpose of the EVALUATION. Notwithstanding the foregoing, the RECEIVING PARTY may disclose CONFIDENTIAL INFORMATION received from the DISCLOSING PARTY to the RECEIVING PARTY'S and its affiliates' trustees, directors, officers and employees, and to the RECEIVING PARTY'S attorneys and consultants (collectively, its "REPRESENTATIVES"), in each case provided such REPRESENTATIVES have a legitimate "need to know" the CONFIDENTIAL INFORMATION for the purpose of the EVALUATION, are first advised of the confidential and/or proprietary nature of such CONFIDENTIAL INFORMATION and are caused by the RECEIVING PARTY to observe the terms of this Confidentiality Agreement as though they were the RECEIVING PARTY. The RECEIVING PARTY shall be responsible to the DISCLOSING PARTY for any act or omission of the RECEIVING PARTY'S REPRESENTATIVES which, if committed by the RECEIVING PARTY, would constitute a breach of this Confidentiality Agreement.

3. In the event that the RECEIVING PARTY, pursuant to applicable law or regulation or legal process, is requested or required by a third party to disclose any CONFIDENTIAL INFORMATION furnished by the DISCLOSING PARTY, the RECEIVING PARTY shall provide the DISCLOSING PARTY with prompt notice of such request or requirement in order to enable the DISCLOSING PARTY to consult with the RECEIVING PARTY with regard to the steps that may be taken by the DISCLOSING PARTY to reduce the extent of CONFIDENTIAL INFORMATION that must be disclosed and/or to enable the DISCLOSING PARTY to seek an appropriate protective order or other remedy, at the DISCLOSING PARTY'S expense, reducing the extent of CONFIDENTIAL INFORMATION that must be disclosed. In any event, the RECEIVING PARTY shall disclose only such CONFIDENTIAL INFORMATION furnished by the DISCLOSING PARTY which the RECEIVING PARTY is advised by legal counsel is legally required in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the DISCLOSING PARTY) and the RECEIVING PARTY shall use reasonable efforts to ensure that all such CONFIDENTIAL INFORMATION that is so disclosed will be accorded confidential treatment.

4. Within fifteen (15) days after written demand of the DISCLOSING PARTY, the RECEIVING PARTY shall return and cause its REPRESENTATIVES to return to the DISCLOSING PARTY all copies of CONFIDENTIAL INFORMATION that were furnished by the DISCLOSING PARTY; provided that, with respect to any such CONFIDENTIAL INFORMATION that consists of documents or media or extracts created by the RECEIVING PARTY or its REPRESENTATIVES that contain any such CONFIDENTIAL INFORMATION furnished by the DISCLOSING PARTY or any extracts thereof, the RECEIVING PARTY may destroy and cause its REPRESENTATIVES to destroy such CONFIDENTIAL INFORMATION and certify in writing to the DISCLOSING PARTY that such destruction has occurred. Compliance with this Paragraph shall not relieve the RECEIVING PARTY from compliance with the other terms of this Confidentiality Agreement.
5. Nothing in this Confidentiality Agreement shall be construed as granting or conferring any rights, by license or otherwise, expressly, implicitly or otherwise, under any patents, copyrights or trade secrets of the DISCLOSING PARTY. Nothing in this Confidentiality Agreement shall be construed as requiring the disclosure of any CONFIDENTIAL INFORMATION. No rights or obligations other than those expressly stated herein shall be implied from this Confidentiality Agreement. In particular, no obligation to perform any project or to enter into any business relationship shall be deemed to exist by virtue of this Confidentiality Agreement.
6. The RECEIVING PARTY shall have no obligation with respect to any CONFIDENTIAL INFORMATION:
 - (a) which at the time of disclosure hereunder is generally available to the public; or
 - (b) which after disclosure hereunder becomes generally available to the public by publication or otherwise through no fault or breach hereof of the RECEIVING PARTY; or
 - (c) which the RECEIVING PARTY can show by written record was in its possession prior to disclosure hereunder; or
 - (d) which the RECEIVING PARTY can show by written record was received by it from a third party after the time of disclosure hereunder and such third party was not restricted from disclosing it to the RECEIVING PARTY; or
 - (e) which the RECEIVING PARTY can show by written record was independently developed by it or a third party after the time of disclosure hereunder other than in connection with an attempt to duplicate CONFIDENTIAL INFORMATION already received.

7. The PARTIES hereto acknowledge that disclosure or misuse of CONFIDENTIAL INFORMATION by the RECEIVING PARTY or its REPRESENTATIVES may result in irreparable harm to the DISCLOSING PARTY, the amount of which may be difficult to ascertain and which could not be adequately compensated by monetary damages, and that therefore the DISCLOSING PARTY is entitled to specific performance and/or injunctive relief to enforce compliance with the terms of this Confidentiality Agreement. Such right of the DISCLOSING PARTY shall be in addition to the remedies otherwise available at law and in equity, including monetary damages. The RECEIVING PARTY agrees to waive and to cause its REPRESENTATIVES to waive any requirement for the securing or posting of any bond or other security in connection with obtaining any such injunctive or other equitable relief.
8. The term of this Confidentiality Agreement is two (2) years from the date first written above. The obligations of the RECEIVING PARTY hereunder shall survive any earlier termination of this Confidentiality Agreement.
9. Any correspondence or notification concerning this Confidentiality Agreement shall be in writing and shall be deemed effective when received, when delivered by hand, sent by overnight mail service, mailed certified mail-return receipt requested, or transmitted by facsimile with date and sending party identified (provided a copy is also sent by overnight mail) addressed to the PARTY as follows:

Consolidated Edison Company
of New York, Inc.
4 Irving Place, Room 9 fl.
New York, New York 10003
ATTN: TeAM, Project Specialist
Telephone: (212) 780-6450/7915
Facsimile: (212) 780-6462

Company _____
Address _____

ATTN: _____
Telephone: _____
Facsimile: _____

10. This Confidentiality Agreement shall be interpreted and the rights and obligations of the PARTIES determined in accordance with the laws of the State of New York, without regard to such state's choice of law rules. The PARTIES irrevocably submit to the jurisdiction of the courts located within the State of New York with regard to any dispute or controversy arising out of or relating to this Confidentiality Agreement. The PARTIES consent to the selection of the New York State and United States courts within New York County, New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Confidentiality Agreement.
11. The PARTIES acknowledge and agree that each PARTY and its Representatives make no express or implied representation or warranty as to the accuracy or completeness of the CONFIDENTIAL INFORMATION and that the other PARTY and its REPRESENTATIVES shall have no liability relating to or arising from the use of the CONFIDENTIAL INFORMATION or for any errors therein or omissions therefrom.
12. This Confidentiality Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. This Confidentiality Agreement and any counterpart thereof may be delivered by facsimile and copies of this Confidentiality Agreement and any counterpart thereof (including copies of signatures thereon) that are delivered by facsimile shall be treated for all purposes as originals.
13. This Confidentiality Agreement may not be amended or modified except in writing signed by both PARTIES hereto.
14. This Confidentiality Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each PARTY hereto; provided, however, that this Confidentiality Agreement may not be assigned by a PARTY hereto without the prior written consent of the other PARTY hereto and any purported assignment without such consent shall be void.
15. This Confidentiality Agreement constitutes the entire agreement among the PARTY hereto with respect to the subject matter hereof and any prior or contemporaneous oral or written agreements or understandings with respect to such subject matter are merged herein.
16. This Confidentiality Agreement shall be construed as to its fair meaning and not strictly for or against either PARTY hereto.
17. No portion of this Confidentiality Agreement is binding upon a PARTY hereto until it is executed on behalf of that PARTY in the space provided below and delivered to the other PARTY hereto. Prior to such execution and delivery, neither the

submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a PARTY hereto.

18. The PARTIES hereto understand and agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for the PROJECT between the PARTIES shall be deemed to exist between the PARTIES, and neither PARTY will be under any legal obligation of any kind whatsoever with respect to the PROJECT by virtue of this or any written or oral expression thereof, except, in the case of this Confidentiality Agreement, for the matters specifically agreed to herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed and delivered this Confidentiality Agreement as of the date first written above.

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

BY: Con Edison

BY: _____

NAME: _____

NAME: _____

TITLE: Project Specialist

TITLE: _____