

**DIRECT RETAIL CUSTOMER
OPERATING AND
TRANSMISSION SERVICE AGREEMENT**

This Operating and Retail Transmission Service 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 10003 (“Con Edison”) and _____, a _____ corporation, having an office for the transaction of business at _____ (“Customer”),

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, Customer is an eligible consumer under the Retail Access Program and desires to purchase electric energy and capacity on an unbundled basis without an energy services company;

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

WHEREAS, Customer has qualified as an Eligible Customer under the NYISO OATT; and

WHEREAS, Con Edison has agreed to support the NYISO in providing Customer 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;

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, Con Edison and Customer agree as follows:

**ARTICLE I
GENERAL 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

This Agreement is effective as of _____, _____, provided that Customer has contracted for transmission and ancillary services under the NYISO OATT. It will remain in effect until terminated in accordance with its terms, the Operating Procedure, or an order of the FERC or the PSCNY; provided that Con Edison may terminate services under this Agreement in accordance with General Rule III(15) of the Full Service Schedule and re-establish it in accordance with General Rules III(19) and III(20) of the Full Service Schedule.

**ARTICLE II
CUSTOMER OBLIGATIONS**

2.1 Creditworthiness

Customer 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 distribution service.

2.2 Forecasting

Customer shall forecast energy requirements and schedule transmission service in accordance with Section 36.2 of the NYISO OATT.

2.3 Payments

In accordance with Part IV of the NYISO OATT, Customer shall pay to Con Edison all charges assessed to Customer under the Retail Access Schedule and this Service Agreement.

2.4 Representations and Warranties.

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

ARTICLE III TRANSMISSION SERVICE

3.1 Nature of Service

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

3.2 Transmission Service Charge

In accordance with Part IV of the NYISO OATT, Customer shall pay Con Edison the transmission service charge and ancillary service charges set forth in Con Edison's OATT, Attachment K, Appendices 2 and 3. The charge for each account participating in the Retail Access Program will be the per unit rate for the service classification applicable to that account multiplied by the demand or amount of energy consumed by the account, as appropriate. Customer shall pay to the NYISO other transmission and ancillary service charges imposed by the NYISO OATT in connection with the transmission of Customer's energy.

3.3 Taxes

Each party hereto will be liable to the appropriate tax authorities for sales, use, gross receipts or other similar or different taxes imposed upon the revenues derived or services rendered by such party.

3.4 Metering, Billing, and Payment

- A.** 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 10.1 and 10.2 of the Operating Procedure. Con Edison will administer each Customer's account and render to each Customer a single combined bill for each account that includes the transmission service charge and charges for distribution service pursuant to Section 7 of the Operating Procedure.
- B.** The provisions of General Rule III(11) of the Full Service Schedule are 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.
- C.** Customer shall pay the full amount stated in any invoice from Con Edison to Customer, without deduction, set-off or counterclaim, within twenty (20) days from the date of such invoice. Claims that any invoice is not correct will be made no more than three (3) months after the invoice date.
- D.** Upon failure of Customer to make any payment when due under this Agreement, Con Edison will assess a late payment charge on all overdue billed amounts, including arrears and unpaid late payment charges.

- E. If Con Edison determines that service to 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.

3.5 Customer Accounts

Con Edison will provide Customer with Customer's billing determinants and such other information as is detailed in the Operating Procedure. Such information will be provided in accordance with the procedures set forth in the Operating Procedure.

**ARTICLE IV
MISCELLANEOUS**

4.1 Resolution of Disputes

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

4.2 Notices

Any notice to be given by Customer 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.
TgcklChoice Operations
4 Irving Place, 9th Floor
New York, New York 10003
Attention: Section Manager

To Customer:

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 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.

4.5 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. 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.

4.6 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. Customer irrevocably consents 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. Customer irrevocably waives any objection that it 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.

4.7 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.

4.8 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 Customer or to impose any such obligation or liability upon Con Edison.

4.9 Not for the Benefit of Non-Parties

This Agreement is for the benefit of Customer and Con Edison, and is not for the benefit of third parties.

IN WITNESS WHEREOF, Con Edison and Customer have executed this Agreement.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____
Name:
Title:

[Insert CUSTOMER's Name]

By: _____
Name:
Title: