CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement, dated as of ________________, 2013, is by and between Consolidated Edison Company of New York, Inc. (“CON EDISON”) and _____________, Inc. (the “RECEIVING PARTY”).

WHEREAS, CON EDISON has, or has available to it, certain reports, data, documents and other information relating to ________________________ (the “PROJECT”), all of which reports, data, documents and other information CON EDISON considers to be sensitive and confidential and is referred to herein as “CONFIDENTIAL INFORMATION”;

WHEREAS, the RECEIVING PARTY is interested in receiving CONFIDENTIAL INFORMATION so that it may review and analyze the CONFIDENTIAL INFORMATION in connection with its potential interest in the PROJECT or some portion thereof (the “WORK”); and

WHEREAS, CON EDISON may be willing to disclose CONFIDENTIAL INFORMATION to the RECEIVING PARTY pursuant to the restrictions, protections and other provisions hereof.

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

1. CONFIDENTIAL INFORMATION shall include (a) reports, documents and information that CON EDISON provides and/or makes available for review in any form or media (including oral, electronic or written) and whether or not marked or identified as confidential, (b) all copies of all such reports, documents and information, and (c) all other media that contain such CONFIDENTIAL INFORMATION, including any extracts, compilations, studies or other documents based upon or derived from CONFIDENTIAL INFORMATION.

2. The RECEIVING PARTY shall: (a) hold CONFIDENTIAL INFORMATION in strict confidence, (b) not disclose CONFIDENTIAL INFORMATION to any other person, firm or corporation (including but not limited to parents, subsidiaries, or affiliates of the RECEIVING PARTY), (c) not use CONFIDENTIAL INFORMATION other than in connection with the WORK, (d) limit reproduction of CONFIDENTIAL INFORMATION to the extent required for the WORK, (e) store CONFIDENTIAL INFORMATION in a secure location that is not accessible to any person or entity not authorized to receive the CONFIDENTIAL INFORMATION under the provisions hereof, and (f) otherwise use at least the same degree of care to avoid publication or dissemination of 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, but not less than reasonable care. CON EDISON, at any time, shall have the right to request adequate assurances that the foregoing restrictions and protections concerning CONFIDENTIAL INFORMATION are being observed and the RECEIVING PARTY shall be obligated to provide CON EDISON with the requested adequate assurances.
3. Notwithstanding the provisions of paragraph 2 hereof, the RECEIVING PARTY may disclose CONFIDENTIAL INFORMATION to its directors, officers, and employees, (collectively, “Agents”) who have a legitimate “need to know” such CONFIDENTIAL INFORMATION in connection with the WORK, provided that each such Agent first: (i) is advised by the RECEIVING PARTY of the sensitive/confidential nature of such CONFIDENTIAL INFORMATION; and (ii) is caused by the RECEIVING PARTY to agree to be bound by and observe the provisions of this Confidentiality Agreement as though the Agent were the RECEIVING PARTY. In addition, the RECEIVING PARTY may disclose CONFIDENTIAL INFORMATION to its subcontractors (or its potential subcontractors where disclosure of CONFIDENTIAL INFORMATION to the RECEIVING PARTY is in connection with the RECEIVING PARTY submitting and/or evaluating whether to submit a bid, proposal or offer to perform work relating to the WORK) and consultants, (collectively, “Representatives”) who have a legitimate “need to know” such CONFIDENTIAL INFORMATION in connection with the WORK, provided that each such Representative first: (i) is advised by the RECEIVING PARTY of the sensitive/confidential nature of such CONFIDENTIAL INFORMATION; (ii) is caused by the RECEIVING PARTY to agree to be bound by and observe the provisions of this Confidentiality Agreement as though the Representative were the RECEIVING PARTY; and (iii) enters into a letter agreement with the RECEIVING PARTY in the form attached hereto as Exhibit “A.” The RECEIVING PARTY shall be responsible to CON EDISON for any act or omission of the RECEIVING PARTY’s Agents and Representatives which, if committed by the RECEIVING PARTY, would constitute a breach of this Confidentiality Agreement.

4. Notwithstanding the provisions of paragraph 2 hereof, in the event that the RECEIVING PARTY or its Agents or Representatives, pursuant to applicable law or regulation or legal process, is requested or required to disclose any CONFIDENTIAL INFORMATION, the RECEIVING PARTY shall provide CON EDISON with prompt written notice of such request or requirement in order to enable CON EDISON to consult with the RECEIVING PARTY with regard to the steps that may be taken by CON EDISON to reduce the extent of CONFIDENTIAL INFORMATION that must be disclosed and/or to enable CON EDISON to seek an appropriate protective order or other remedy reducing the extent of Confidential Information that must be disclosed. In any event, the RECEIVING PARTY shall cause the RECEIVING PARTY and its Agents and Representatives to disclose only such CONFIDENTIAL INFORMATION which they are 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 CON EDISON) and the RECEIVING PARTY shall cause the RECEIVING PARTY and its Agents and Representatives to use reasonable efforts to ensure that all CONFIDENTIAL INFORMATION that is so disclosed will be accorded confidential treatment.

5. Within ten (10) days after the earliest of (a) completion of the WORK, or (b) CON EDISON’s written demand, the RECEIVING PARTY shall: (i) destroy and cause its Agents and Representatives to destroy all copies of the CONFIDENTIAL INFORMATION including all copies of all documents and of all other media that contain any CONFIDENTIAL INFORMATION and all copies of any extracts, compilations, studies or other documents
prepared by the RECEIVING PARTY or its Agents or Representatives based on or derived from CONFIDENTIAL INFORMATION (but excluding any such extracts, compilations, studies or other documents that were so prepared to the extent they were included in documents submitted to the board of directors of the RECEIVING PARTY or of its Representative in connection with the WORK or are required by law to be maintained by the RECEIVING PARTY or its Representative, in which case they may be retained by the RECEIVING PARTY or the subject Representative, as applicable, in a confidential manner and otherwise subject to the provisions of paragraph 2 hereof); (ii) certify to CON EDISON that the destruction by the RECEIVING PARTY and its Agents and Representatives required by clause (i) immediately above has occurred by having a duly authorized officer of the RECEIVING PARTY (or, if the RECEIVING PARTY is not a corporation or other entity with officers, then the RECEIVING PARTY shall have an authorized person of similar position and authority in the RECEIVING PARTY) complete, execute and deliver to CON EDISON (at the address for CON EDISON pursuant to Paragraph 9 hereof) a certification in the form attached hereto as Exhibit “B”; and (iii) obtain substantially similar certifications from its Representatives and maintain them on file. Compliance with this paragraph shall not relieve the RECEIVING PARTY from compliance with the other provisions of this Confidentiality Agreement.

6. 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 CON EDISON. 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 work or project or to enter into any business relationship shall be deemed to exist by virtue of this Confidentiality Agreement.

7. The RECEIVING PARTY and its Agents and Representative shall not be relieved of their obligations hereunder with respect to any CONFIDENTIAL INFORMATION by reason of its availability to the public by publication or otherwise at any time and regardless of whether it was available to the public before or after it was disclosed pursuant to this Confidentiality Agreement.

8. The parties acknowledge that disclosure or misuse of CONFIDENTIAL INFORMATION in violation of this Confidentiality Agreement may result in irreparable harm to CON EDISON, the amount of which may be difficult to ascertain and which could not be adequately compensated by monetary damages, and that therefore CON EDISON is entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Confidentiality Agreement. Such right of CON EDISON shall be in addition to the remedies otherwise available at law and in equity, including monetary damages. The RECEIVING PARTY agrees to waive any requirement for the securing or posting of any bond or other security in connection with CON EDISON obtaining any such injunctive or other equitable relief.
9. All notices and other correspondence hereunder shall be in writing and shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service as follows:

If to the RECEIVING PARTY:

________________________

________________________

If to CON EDISON:

Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1450-S
New York, NY 10003
ATTN: Mr. John Beck

A party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other party by written notice given pursuant hereto.

10. The RECEIVING PARTY irrevocably submits 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 RECEIVING PARTY agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to the RECEIVING PARTY at the address for the RECEIVING PARTY pursuant to paragraph 9 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this paragraph, there would be no jurisdictional basis for such service. The RECEIVING PARTY agrees that service of process on it may also be effected in any manner permitted by law. The RECEIVING PARTY consents to the selection of the New York State and United States courts within New York County or Westchester 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. 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 recourse to such state's choice of law rules.

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. Copies of this Confidentiality Agreement and copies of signatures on this Confidentiality Agreement, including any such copies 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.
14. This Confidentiality Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each party; provided, however, that this Confidentiality Agreement may not be assigned by a party without the prior written consent of the other party and any purported assignment without such consent shall be void.

15. This Confidentiality Agreement constitutes the entire agreement between the parties 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.

17. No portion of this Confidentiality Agreement is binding upon a party until it is executed on behalf of that party in the space provided below and delivered to the other party. 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.

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

Consolidated Edison Company of New York, Inc.

By:_________________________ By:_________________________
Name (print):________________ Name (print):________________
Title:_______________________ Title:_______________________
Dear [insert contact person for Representative]:

This letter agreement ("Agreement") between ______________________ (the "RECEIVING PARTY") and [insert the name of the other party to this letter agreement, i.e., the Representative to whom the RECEIVING PARTY wishes to disclose Confidential Information] (the "Representative") confirms that the Representative agrees to comply with and be bound by the provisions of the Confidentiality Agreement between Consolidated Edison Company of New York, Inc. ("CON EDISON") and the RECEIVING PARTY dated ________________ 2007 (as the same from time to time may have been or hereinafter may be amended, the "CON EDISON CONFIDENTIALITY AGREEMENT") as though the Representative had executed the CON EDISON Confidentiality Agreement with CON EDISON. CON EDISON shall be a third party beneficiary of this Agreement and shall be entitled to enforce this Agreement.

This Agreement shall be interpreted and the rights and obligations hereunder determined in accordance with the laws of the State of New York, without recourse to such state's choice of law rules. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered by facsimile, shall be treated for all purposes as originals.

Very truly yours,

_________________
By: ____________________
Name: ____________________
Title: ____________________

Accepted And Agreed To:

[insert name of the Representative]

By: ____________________
Name: ____________________
Title: ____________________
CERTIFICATION

To: Consolidated Edison Company of New York, Inc. (“CON EDISON”)

Reference is made to the Confidentiality Agreement between CON EDISON and ______________________ (the “RECEIVING PARTY”) dated ___________________ 2007 (the “Confidentiality Agreement”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Confidentiality Agreement. Pursuant to the Confidentiality Agreement, the RECEIVING PARTY hereby certifies the following to be true:

(i) the RECEIVING PARTY has destroyed and has caused each of its Agents and Representatives to destroy all copies of the CONFIDENTIAL INFORMATION including all copies of all documents and of all other media that contain any CONFIDENTIAL INFORMATION and all copies of any extracts, compilations, studies or other documents prepared by the RECEIVING PARTY, its Agents or its Representatives based on or derived from CONFIDENTIAL INFORMATION (but excluding any such extracts, compilations, studies or other documents that were so prepared to the extent they were included in documents submitted to the board of directors of the RECEIVING PARTY or of its Representative in connection with the WORK or are required by law to be maintained by the RECEIVING PARTY or its Representative, in which case they may be retained by the RECEIVING PARTY or such Representative, as applicable, in a confidential manner and otherwise subject to the provisions of paragraph 2 of the Confidentiality Agreement); and

(ii) the RECEIVING PARTY has obtained from each of its Representatives a certification substantially similar to this certification.

________________________________________

By: __________________________

Name: __________________________

Title: __________________________

Date: __________________________