

**Consolidated Edison Company of New York
Telecom Applications Management Department
Issued and Effective December 27, 2005
Standard Terms and Conditions
For Wireless Facilities**

**SECTION 1:
TAXES**

Licensee shall bear all responsibility for any and all federal, state and local income, sales, use, excise, occupations, franchise, property, gross receipts, privilege, transfer, unincorporated business and other taxes that may be applicable to Licensee's Wireless Facilities and other installations owned by Licensee and located in, on, over or through the Con Edison Facilities, and for all federal, state and local taxes, contributions, and premiums imposed upon or measured by Licensee's payroll. Licensee's obligation to pay the amounts due under this section, if any, shall survive the expiration or termination of this Service Agreement. Licensee is not responsible for any income taxes assessed directly against Con Edison for income derived from the License Fees.

**SECTION 2:
PERMITS, CODES, LAWS AND REGULATIONS**

- A.** Licensee shall, at its expense, obtain and maintain all governmental and non-governmental franchises, consents, easements, permits, authorizations, and approvals required for the construction, installation, operation, repair and maintenance of Licensee's Wireless Facilities in, on, over or through the Con Edison Facilities for the Permitted Use ("Approvals") and must provide copies of same to Con Edison before such construction, installation, operation, maintenance or repair, as applicable.
- B.** If applicable law requires that Con Edison execute applications for an Approval or documentation related to such applications, Licensee, at its expense, shall prepare such applications and documentation for review by Con Edison (which review shall be conducted at Licensee's expense) and, if the applications and documentation meet with Con Edison's approval (which approval shall not be unreasonably withheld), Con Edison shall cause its authorized representative to execute such applications of documentation. Licensee, at its expense, shall make such corrections or amendments to such applications and documentation as Con Edison reasonably may request.
- C.** Licensee shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes, and Con Edison requirements, procedures, policies and engineering specifications applicable to the Con Edison Facilities, the Permitted Use, or the construction, installation, operation, repair and

maintenance of Licensee's Wireless Facilities, including, without limitation, all applicable federal, state, and local environmental laws, orders, regulations, ordinances, rules, codes, and Con Edison environmental requirements and procedures (including but not limited to those pertaining to air pollution, water pollution, management, removal, or disposal of toxic substances (including asbestos), hazardous substances, flammable substances, hazardous waste, oily waste and solid waste, pesticides, and protection of wetlands and wildlife).

- D. Licensee shall be responsible for obtaining from private and or public authority any necessary easement, right of way, license, permit, permission, certificate or franchise to construct, operate and/or maintain Licensee's Wireless Facilities in or on public and private locations where Licensee's Wireless Facilities enter the Con Edison Facilities. Con Edison does not warrant the validity or apportionability of any rights it may hold to place Licensee's Wireless Facilities on private property.

SECTION 3:

TITLE TO LICENSEE'S FACILITIES; REMOVAL OF LICENSEE'S FACILITIES

- A. Subject to the terms of this Service Agreement, Licensee shall retain title to all portions of the Licensee's Wireless Facilities.
- B. All portions of Licensee's Wireless Facilities shall be capable of removal at any time, including upon the expiration of this Agreement or its earlier termination. Unless otherwise agreed to in a writing signed by both parties, within thirty (30) days after the expiration of this Service Agreement or its earlier termination for any reason and at Licensee's expense, Licensee's Wireless Facilities shall be removed from the Con Edison Facilities and the Con Edison Facilities shall be restored to substantially the same condition as existed prior to the construction, installation, operation, repair and maintenance of Licensee's Wireless Facilities therein, thereon, thereover, or there through.

SECTION 4:

INSURANCE

- A. Licensee shall and shall cause all contractors and subcontractors doing work on behalf of Licensee, to procure and maintain at their own expense the following insurance until this Service Agreement expires or is earlier terminated, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage and shall be placed with insurance companies that are acceptable to Con Edison.

- (i) Employment related insurance.
 - (a) Workers' Compensation Insurance and Disability Insurance Benefits as required by law. Such insurance shall contain a waiver of subrogation clause endorsement in favor of Con Edison.
 - (b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).
 - (c) Where applicable, insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.
- (ii) Comprehensive (also called Commercial) General Liability Insurance, inclusive of excess liability if necessary, including Contractual Liability, with limits of \$10,000,000 per occurrence for bodily injury or death and \$10,000,000 per occurrence for property damage or a combined single limit of \$10,000,000 per occurrence, and, for at least one year after the expiration or earlier termination of this Agreement, Products/Completed Operations Liability Insurance with similar but separate and independent limits. Where work is to be performed in or on streets or sidewalks the liability policies shall have no deductibles.

There shall be no policy deductibles unless and to the extent that Con Edison's prior written approval has been obtained for the same. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison and Verizon as additional insureds, shall be primary and non-contributory to any insurance carried by Con Edison and Verizon, and shall contain a cross-liability endorsement. There shall be no exclusions for claims by or on behalf of employees of Licensee or any contractors or subcontractors of Licensee against Con Edison and Verizon based on injury or death to such employees. Without limitation of the exclusions that shall not be permitted, there shall be no exclusions for any claims by or on behalf of Licensees of Licensee or by or on behalf of lessees or licensees of single mode dark or lit fiber optic strands in Fiber Optic Cable.
- (iii) Comprehensive Automobile Liability Insurance, inclusive of excess liability if necessary, covering all owned, non-owned and hired automobiles used by Licensee, with limits of \$2,000,000 per occurrence for bodily injury or death and \$2,000,000 per occurrence for property damage or a combined single limit of \$2,000,000 per occurrence.
- (iv) Where any work involves the use of aircraft, Aircraft Liability Insurance,

covering all owned, non-owned and hired aircraft, including helicopters, used by Licensee with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance shall name Con Edison and Verizon as additional insureds.

- (v) For any work involving asbestos abatement or lead abatement, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$5,000,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison and Verizon as additional insureds. Where the abatement work is to be performed by a contractor or subcontractor, Licensee shall require the contractor and subcontractor to name Licensee, its contractor and subcontractor, Con Edison and Verizon as additional insureds and to submit copies of the policies to Con Edison.
- (vi) If any work involving excavation on Con Edison property is planned to be performed, thirty (30) days' advance written notice of such work shall be provided to Con Edison and Con Edison, within fifteen (15) days after receipt of such notice may, upon written notice to Licensee, require that such pollution insurance or additional pollution insurance with such limits as Con Edison may require in its reasonable discretion be obtained by Licensee prior to the commencement of such work, in which case each such insurance policy shall name Con Edison as an additional insured as well as any others as Con Edison may require in its reasonable discretion.

B. Licensee shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least 30 days' written notice prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary as to the additional insureds.

C. Five (5) business days prior to any Permitted Use of the Con Edison Facilities, Licensee shall furnish Con Edison with Certificate(s) of Insurance signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be cancelled without at least 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, and state that Con Edison and Verizon are additional insureds with respect to all coverage enumerated in Paragraph A (ii), (iv), and (v) of this Section. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Licensee shall furnish Con Edison with a copy of the insurance policy containing the coverage enumerated in Paragraph A (ii) of this Section at the time that certificates are required to be furnished as provided above. Con Edison shall have the right to require Licensee to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under Paragraphs A(i), A(iii), A(iv), A(v), and A(vi) of this Section. Licensee agrees that

this is an insured contract. The insurance required herein is intended to cover any cause of action or lawsuit arising from, relating to, or connected with Licensee's Wireless Facilities or the Con Edison Facilities or any work performed by any person or entity concerning Licensee's Wireless Facilities or the Con Edison Facilities. For purposes of interpretation of coverage of any policy of insurance or endorsement thereto, Licensee shall be deemed to have assumed tort liability for any injury to or death of any employee of Licensee or of Con Edison, and of any contractor or subcontractor of either arising from, relating to, or connected with Licensee's Facilities, the Con Edison Facilities, or any work performed by any person or entity concerning Licensee's Wireless Facilities or the Con Edison Facilities, except to the extent of any liability arising out of the negligence of Con Edison.

The Certificates of Insurance and the copy of insurance required under Paragraph C of this Section shall be sent to:

Consolidated Edison Company of New York, Inc.
TeAM – Telecom Applications Management
4 Irving Place, 9th Floor, Mailbox #16
New York, NY 10003
Attention: Project Manager/ Specialist

- D.** Licensee shall cause the following provisions to be a part of any contract with any contractor hired by Licensee to perform work relating to the construction, installation, maintenance, or operation of Licensee's Wireless Facilities and shall cause any such contractor who hires a subcontractor to cause the following provisions to be a part of any subcontract which provisions: (i) require such contractors and subcontractors to procure and maintain, without expense to Con Edison, the same insurance as Licensee is required to procure and maintain by this Service Agreement; (ii) require such contractors and subcontractors to name Con Edison and Verizon as additional insureds on such insurance policies to the same extent that Con Edison is required to be named as an additional insured on the policies required to be procured and maintained by Licensee pursuant to this Agreement; and (iii) expressly state that such insurance and additional insured requirements are also for the benefit of Con Edison and Verizon.
- E.** Annually, Con Edison shall have the right to amend the insurance requirements and increase the monetary limits contained in this Section. Any changes in the amount of insurance required shall be made on a commercially reasonable basis. At Licensee's request, Con Edison will provide justification for any increase that exceeds by ten percent (10%) the monetary limits previously required under this Section for that insurance immediately before such increase.

SECTION 5.

INDEMNIFICATION; RELEASE; WAIVER; LIMITATION OF LIABILITY

- A.** Except for claims, actions, liabilities, damages, costs, and expenses to the extent they are caused by the negligence of Con Edison, Licensee, to the fullest extent permitted by law, shall indemnify, defend, and hold harmless Con Edison, its affiliates, and its and their respective trustees, directors, officers, employees, and agents and Verizon (referred to herein collectively as the "Protected Parties") from and against any and all claims, actions, liabilities, damages, costs, and expenses (including without limitation attorney fees and other legal costs and expenses), whether based in contract, tort or otherwise, which are asserted, suffered, or incurred by any person or entity (including Licensee and the Protected Parties) and which arise from, relate to, or are connected with Licensee's Wireless Facilities, the Con Edison Facilities, or any work performed by any person or entity concerning Licensee's Wireless Facilities or the Con Edison Facilities (the foregoing claims, actions, liabilities, damages, costs, and expenses being hereinafter referred to as the "Covered Claims"). To the fullest extent permitted by law, Licensee hereby irrevocably and unconditionally agrees to release and forever discharge the Protected Parties from any and all liability for any of the Covered Claims and to waive any and all rights to assert any of the Covered Claims (directly or by impleader, crossclaim, counterclaim or otherwise) against the Protected Parties or any of them in the future.
- B.** Notwithstanding the exception contained in Paragraph A of this Section 5 relating to Covered Claims to the extent caused by the negligence of Con Edison, Licensee and Con Edison agree, to the fullest extent permitted by law, that under no circumstances shall the Protected Parties or any of them be liable to Licensee, whether in contract, tort (including negligence, gross negligence and strict liability), or otherwise, for any special, indirect, incidental, or consequential damages (including but not limited to damage, loss, liability, costs, and expenses resulting from loss of use, loss of business or business opportunities, loss of profits or revenue, costs of capital, loss of goodwill, claims of Licensees, claims of unrelated companies and other third parties, cost of purchased or replacement telecommunications capacity, and like items of special, indirect, incidental, or consequential loss and damage) asserted, suffered, or incurred by any person or entity (including Licensee and the Protected Parties), which arise, relate to or are connected with this Service Agreement the implementation of same, Licensee's Facilities, the Con Edison Facilities, or any work performed by any person or entity concerning the Con Edison Facilities or Licensee's Facilities regardless of whether or not such damages or losses are caused in whole or in part by the acts or omissions (including negligence, gross negligence or willful acts) of the Protected Parties or any of them.

The damages and losses referred to in this Paragraph B are hereinafter referred to as the "Consequential Losses." To the fullest extent permitted by law, Licensee hereby irrevocably and unconditionally agrees to release and forever discharge the Protected Parties from any and all liability for any Consequential Losses and to waive any and all rights to recover any Consequential Losses from the protected parties or any of them in

the future. To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold the Protected Parties harmless from and against any and all Consequential Losses (including any attorneys fees and any other legal costs and expenses in connection therewith) asserted, suffered or incurred by any person or entity (including the parties hereto)

- C. If a court of competent jurisdiction determines that any provision of Paragraph A or B of this Section 5 is unenforceable, the total liability of the Protected Parties or any of them for all matters which otherwise would have been covered by such Paragraphs shall be \$250,000. If a court of competent jurisdiction determines that any provision of Paragraphs A or B of this section or the preceding sentence of this Paragraph C is unenforceable, such court shall limit the operation of only such portions of such provisions as are unenforceable so as to give them the effect intended to the fullest extent permitted by law.

SECTION 6

DAMAGE AND DESTRUCTION

- A. Without limitation of Section 5, to the extent that any portion of Licensee's Wireless Facilities or the Con Edison Facilities shall be damaged or destroyed during the Term by any cause other than the gross negligence or willful misconduct of Con Edison, such damage or destruction shall be promptly repaired or replaced at Licensee's expense if the damage is to Licensee's Wireless Facilities and at Con Edison's expense if the damage is to the Con Edison Facilities unless such damage or destruction was the result of Licensee's negligence. In the event the damage or destruction was the result of Licensee's negligence, the damage or destruction to Licensee's Wireless Facilities and the Con Edison Facilities shall be repaired or replaced at Licensee's sole expense and in neither event shall there be an abatement or reduction in the Rental Charges to be paid or provided to Con Edison hereunder.
- B. To the extent that (i) any portion of Licensee's Wireless Facilities or the Con Edison Facilities is materially damaged or destroyed during the term of this Service Agreement by the gross negligence or willful misconduct of Con Edison during the Term, such damage or destruction shall be promptly repaired or replaced at Con Edison's sole expense. Licensee's obligation to pay the Rental Charges applicable to any portion of the Con Edison Facilities which is made unusable for the Permitted Use by such damage or destruction shall be suspended until such portion of the Con Edison Facilities is again useable for the Permitted Use. Such obligation to promptly repair or replace and such suspension of Licensee's obligation to pay the Rental Charges shall be the sole and exclusive remedy of Licensee against Con Edison arising from, relating to, or connected with any damage to or destruction of Licensee's Wireless Facilities or the Con Edison Facilities.
- C. To the extent that any other Con Edison property is damaged or destroyed by the act or

omission of Licensee and such act or omission to act is related to or arises out of Licensee's Service Agreement with Con Edison or Licensee's occupancy of the Con Edison Facilities, Licensee shall cause said property to be repaired or replaced at Licensee's sole cost and expense.

- D. Notwithstanding anything to the contrary in Paragraphs A, B or C of this Section 6 proceeds from the insurance required by this Service Agreement on account of damage or destruction to the Con Edison Facilities or Licensee's Wireless Facilities or other Con Edison property shall be applied to the cost of repairing or replacing such damage or destruction and the party responsible for bearing the cost of such repair or replacement only shall be responsible for such cost to the extent it exceeds such insurance proceeds.

SECTION 7

CONDEMNATION; OTHER LEGAL REQUIREMENTS

- A. To the extent that any portion of the Con Edison Facilities shall be taken under the power of eminent domain ("Taken Portion"), commencing with the date that Con Edison yields possession to the condemning authority of the Taken Portion, the license fee applicable to the Taken Portion and any portion of the Con Edison Facilities rendered unusable for the Permitted Use shall not be paid and Con Edison shall endeavor in good faith to provide, on terms reasonably acceptable to Con Edison, and Licensee shall endeavor in good faith to obtain, on terms reasonably acceptable to it, the use of property of others as a substitute for such unavailable Con Edison Facilities
- B. If any portion of the Licensee's Wireless Facilities shall be taken under the power of eminent domain, as of the date that Licensee yields possession of such portion to the condemning authority, Licensee shall be relieved of the obligation to pay Con Edison the Rental Charges applicable to such portion so taken. In the event that such a taking results in such a portion of the Con Edison Facilities not being available for the Permitted Use and replacement, in kind of the portion of Licensee's Wireless Facilities so taken, Con Edison shall endeavor in good faith to provide, on terms reasonably acceptable to Con Edison and the Licensee, other Con Edison property as a substitute for such unavailable Con Edison Facilities and Licensee shall endeavor in good faith to obtain, on terms reasonably acceptable to it, the use of property of others as a substitute for such unavailable Con Edison Facilities
- C. Each party shall notify the other in writing promptly after it learns that any eminent domain taking of any portion of Licensee's Wireless Facilities or the Con Edison Facilities is threatened.
- D. All compensation awarded for any taking of the Con Edison Facilities or any portion thereof by power of eminent domain shall belong to Con Edison; provided, however, that nothing contained herein shall prevent Licensee from applying (if permitted by law) for reimbursement from the condemning authority for any expense it suffers relating to or

arising from any such taking, including but not limited to, any expense related to any obligation of Licensee that arises from such taking for the removal, alteration, relocation, repair, installation or construction of any portion of Licensee's Facilities, but only if such application will not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Con Edison.

- E.** All compensation awarded for any taking of Licensee's Facilities or portion thereof by power of eminent domain shall belong to Licensee, including but not limited to any expense related to or arising from any such taking, including but not limited to any expense related to any obligation of Licensee that arises from such taking for the removal, alteration, relocation, repair, installation or construction of any portion of Licensee's Facilities, but only if such application will not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Con Edison.

SECTION 8

TERMINATION FOR BREACH

If a party breaches a material term or condition of this Service Agreement, the non-breaching party may terminate this Service Agreement after at least 30 days has expired since it has given the breaching Party written notice of the nature of the breach and its intention to terminate, provided that the breaching party does not cure the claimed breach within such 30 day period or within such longer period as may be provided in the written notice from the non-breaching party. If the breach has not been cured within such 30 day period or within such longer period as may be provided in the first written notice from the non-breaching party, the non-breaching party may send a second written notice to the breaching party notifying the breaching party that this Agreement, or the applicable portions thereof, is terminated. Notwithstanding the foregoing, Con Edison may terminate on shorter notice than provided above and/or without any opportunity by Licensee to cure if Licensee's Wireless Facilities interfere with Con Edison's Public Utility Purposes.

For purposes of this Service Agreement, breach of a material term or condition by Licensee shall include but not be limited to

- i) Any breach of a condition or obligation for which this Service Agreement states that Licensee's occupancy may be terminated;
- ii) Failure by Licensee to pay the Rental Charges, Late Payment Charges and any other applicable charges, in accordance with the terms of the Service Agreement;
- iii) Licensee's Wireless Facilities being constructed, installed, operated, repaired or maintained in violation of any law or in aid of any unlawful act or undertaking

- iv) Licensee's occupying Con Edison Facilities without first obtaining authorization from Con Edison to so occupy or Licensee's occupying of Con Edison Facilities with any Unlicensed Facilities;
- v) Licensee's failure to abide by the Operating Procedures, Con Edison procedures, polices and any other requirement contained in the Service Agreement;
- vi) Licensee's assigning, sub-licensing, subletting or transferring all or a portion of the Service Agreement to others without Con Edison's prior, express written consent, where required under the Service Agreement;
- vii) Licensee's dissolving or being liquidated or admitting in writing its inability to pay its debts as they become due, or failing to lift an execution, garnishment or attachment of such consequence as will impair the Licensee's ability to perform substantially its obligations pursuant to this Service Agreement, or committing any act of bankruptcy or being adjudicated as a bankrupt, or making an assignment for the benefit of creditors, or entering into an agreement of composition with its creditors; and
- viii) Licensee's failure to provide or maintain the requisite security required under Section 10 of these Terms and Conditions.

SECTION 9

RECALL OF CON EDISON FACILITIES;

TERMINATION FOR REASONS OTHER THAN BREACH

In the event that Con Edison determines in its sole discretion that it requires any portion of the Con Edison Facilities for its Public Utility Purposes and a portion of or all of Licensee's Wireless Facilities are located on Con Edison Facilities required for said Public Utility Purposes, then Con Edison may, upon sixty days prior written notice, recall the Con Edison Facilities. Con Edison will use commercially reasonable efforts to provide alternate Con Edison Facilities for Licensee's Wireless Facilities.

SECTION 10

FINANCIAL SECURITY

Financial security will be required of Licensee to cover one year of rental charges as under the Service Agreement and an amount determined by Con Edison, to cover all costs associated with the removal of Licensee's Wireless Facilities from the Con Edison Facilities and any costs required to return the Con Edison Facilities to substantially the same condition they were in

prior to the installation of Licensee's Wireless Facilities. The financial security may be used to satisfy any obligation of Licensee pursuant to the Service Agreement. Licensee shall furnish a cash deposit, letter of credit, bond or other evidence of security acceptable to Con Edison.

Financial security must be in one of the following forms: (a) a cash deposit; (b) a replenishable, standby irrevocable letter of credit issued by a bank, insurance company, or other financial institution with at least an "A" bond rating; (c) a guaranty, acceptable to the Company, by another party or entity with a satisfactory credit rating of at least "BBB" by S&P's, "Baa2" by Moody's, or "BBB" by Fitch ("Minimum Rating"); or (d) a surety bond from a bank, insurance company, or other financial institution with at least an "A" bond rating. If the rating of a bank, insurance company, or other financial institution from which the Licensee has obtained a letter of credit or surety bond falls below an "A" rating, the Licensee shall have at least five calendar days to obtain a substitute letter of credit or surety bond from an "A" rated bank, insurance company, or other financial institution. Where the Licensee's guarantor meets the creditworthiness standard of having a Minimum Rating from S&P's, Moody's, or Fitch, the Company may require the Licensee to post an alternative form of security if the Licensee's guarantor is placed on credit watch with negative implications by any of the three designated rating agencies or if the Company receives information that the credit rating of the Licensee's guarantor could be downgraded below the Minimum Rating. The request for an alternative form of security will be lifted if the credit rating of the Licensee's guarantor is not downgraded in the ensuing sixty days.

The Company may call upon the financial security under circumstances specified in the Service Agreement, Operating Procedures or these Terms and Conditions. Con Edison shall be permitted to apply such security deposit to satisfy any obligations of Licensee hereunder that has not been timely performed by Licensee, including, but not limited to making payments of leasing fees, late payment charges, Make Ready Work charges, and any other payments required by the Service Agreement, Operating Procedures or these Terms and Conditions. If at any time during the Term of the Service Agreement, Con Edison draws upon said security due to Licensee's failure to timely perform its obligations pursuant to the Service Agreement, Licensee shall be notified that the security deposit has been drawn upon and Licensee shall, within ten days from the date of notification, immediately replenish the security. Failure to replenish the security by Licensee within said ten-day period shall be deemed a material breach under this Service Agreement for which Con Edison may terminate in accordance with the provisions of Section 8.