

**Consolidated Edison Company of New York, Inc.
Telecom Application Management Department**

Wireless Facilities License and Service Agreement

Wireless Facilities License and Service Agreement (“Service Agreement”) made as of _____ between Consolidated Edison Company of New York, Inc. (“Con Edison”), a New York corporation, having its principal place of business at 4 Irving Place, New York, New York 10003 and _____, (“Licensee”).

WHEREAS, Licensee proposes to construct, install, operate and maintain Wireless Facilities on Con Edison’s distribution and guy poles (“Con Edison Facilities”) in Con Edison’s Franchise Area;

WHEREAS, the general property to be licensed to Licensee, shall be described in Exhibit A to this Service Agreement;

WHEREAS, Verizon New York, Inc. (“Verizon”) has rights to joint use poles owned by Con Edison, which are subject to a joint use agreement¹ between Con Edison and Verizon dated January 1, 1982;

NOW THEREFORE, in consideration of the promises and covenants contained in this Service Agreement the parties agree as follows:

**Article I
Definitions**

Approvals; means all governmental and non-governmental franchises, consents, easements, permits, authorizations, and approvals required for the construction, installation, operation, and maintenance of Wireless Facilities on the Licensed Property

Communications Zone; means the traditional area on Con Edison’s distribution poles where third party Licensees are permitted to attach telecommunication facilities including span wire attachments and Con Edison authorized wireless facilities.

Con Edison Facilities; means Con Edison owned primary and secondary distribution and guy poles.

Electric Zone; means the area on Con Edison’s distribution poles where primary and secondary electric distribution equipment has been installed or is required for future Use For Public Utility Purposes.

¹ Agreement Between Consolidated Edison Company of New York, Inc. and the New York Telephone Company Covering the Joint Use of Poles Effective January 1, 1982.

Franchise Area; means the service territory of Con Edison.

Licensed Property; means the Con Edison Facilities where Licensee has been granted permission to install Wireless Facilities.

Licensee; means the authorized wireless telecommunications service provider that is a signatory to this Service Agreement.

License Fees; means the fee to be paid by Licensee to Con Edison for each attachment of Wireless Facilities to Con Edison Facilities.

License Grant; means the Licensed Property described on Exhibit A to this Service Agreement and any additional Licensed Property that may be added pursuant to the Service Agreement.

Make Ready Work; means any work necessary to prepare Con Edison Facilities for use by Licensee.

Operating Procedures; means the operating procedures identified in Article III of the Service Agreement that are incorporated by reference as part of this Service Agreement.

Permitted Use; means constructing, installing, operating, and maintaining Wireless Facilities solely for the purposes of the operation by Licensee of its service(s), as more particularly described and authorized in Licensee's franchise(s) or other appropriate governmental authorizations, copies of which have been supplied to Con Edison.

Pole Attachment Agreement; means the then effective agreement between Licensee and Con Edison to attach span wire facilities to Con Edison distribution poles, pursuant to Rider K of Con Edison's electric tariff – PSC No. 9 – Electricity.

Service Agreement; means this agreement between Licensee and Con Edison.

Standard Terms and Conditions; means the standard terms and conditions identified in Article III of the Service Agreement that are incorporated by reference as part of this Service Agreement.

Unlicensed Attachment; means an attachment for which a license has not been obtained or for which the license has been cancelled or terminated or a licensed attachment that has been subsequently modified in a manner inconsistent with the design parameters originally approved by Con Edison as a condition of the License.

Wireless Facilities; means Licensee owned and operated equipment utilized to provide telecommunications services to third parties. Wireless Facilities generally include, but are not limited to, antennae, power supplies, amplifiers, transceivers and connectors.

Article II

Grant of Right to Use Con Edison Property

A. Subject to all of the terms and conditions of this Service Agreement, including but not limited to the Standard Terms and Conditions, the Operating Procedure and PSC No. 9 – Electricity, Rider K referenced in Article III, Con Edison hereby grants to Licensee a non-exclusive license to construct, install, operate and maintain Wireless Facilities on the Licensed Property as described in Exhibit A to this Service Agreement (the "License Grant"). No right to locate any structure, equipment, facilities, or other property of Licensee other than on the Licensed Property is granted hereby.

B. Without limitation of any other condition, limitation, or restriction imposed by this Service Agreement or any other agreement between the parties, the use of the Licensed Property permitted hereunder is restricted to constructing, installing, operating, and maintaining Wireless Facilities solely for the purposes of the operation by Licensee of its service(s), to the extent that such activity does not interfere with any existing or future generation, transmission, or distribution of electricity, gas, or steam by Con Edison or by any existing or future parent, subsidiary, or affiliate of Con Edison or with any existing or future customer service work related to, arising from, or connected with such generation, transmission, or distribution, as more particularly described and authorized in Licensee's franchise(s) or other appropriate governmental authorizations, copies of which have been supplied to Con Edison, (the "Permitted Use"). No lease or license of Licensee's Facilities by any lessee or licensee shall release or relieve Licensee from any obligation pursuant to this Service Agreement. No such lease or license and no such use by any such lessee or licensee shall create any contractual rights in any such lessee or licensee against Con Edison and Con Edison shall have no obligation or liability whatsoever to any such lessee or licensee based on contract, tort (including without limitation strict products liability, negligence, and gross negligence), warranty, or otherwise arising from or relating to any such lease or license, any such use by any such lessee or licensee, this Service Agreement or the Licensed Property. In any such lease or license, Licensee shall advise such lessee or licensee that Licensee's Facilities which are the subject of the lease or license are in close proximity to electrical cables that are subject to fault, burnout, or other malfunction which can result in damage, destruction, or disruption to Licensee's Facilities and shall provide in such lease or license that Consolidated Edison Company of New York, Inc. assumes no liability for any such damage, destruction, or disruption. The Licensed Property may not be used by Licensee or its permitted successor or assigns for any purpose other than the Permitted Use.

C. Nothing herein shall be construed as a grant by Con Edison of any exclusive right or privilege to Licensee. Nothing herein shall be construed as a grant of any interest in real property. Without limitation of any other right of Con Edison hereunder, Con Edison and, to the extent permitted by Con Edison, any existing or future parent, subsidiary, affiliate or successor or assign of Con Edison (collectively, the "Con Edison Entities", it being understood and agreed that for purposes of this definition for this Service Agreement, Licensee shall not be deemed to a subsidiary or affiliate of Con Edison or one of the Con Edison Entities) has the right to use all or part of the Licensed Property for any existing or future generation, transmission, or distribution of electricity, gas, or steam or for any existing or future customer service work or responsibility related to, arising from, or connected with such generation, transmission, or distribution (collectively, "Use For Public Utility Functions") and the License Grant and Permitted Use are subject and subordinate to Use For

Public Utility Functions. In addition to being subject and subordinate to Use For Public Utility Functions, the License Grant and the Permitted Use also are subject to and subordinate to all contracts, mortgages, liens, encumbrances, restrictions, leases, licenses, easements, rights, or privileges of any nature heretofore or hereafter granted, given, entered into, incurred, or suffered by any of the Con Edison Entities, or arising pursuant to law which affect the Licensed Property or the Permitted Use and all existing and future uses by Con Edison of the Licensed Property; provided, however, that, except as otherwise permitted by this Service Agreement or required by law, from the date of this Service Agreement until its expiration or earlier termination, Con Edison shall not grant or give to third parties other than to any of the Con Edison Entities for Use For Public Utility Functions any right or privilege to use the Licensed Property which substantially interferes with or precludes the Permitted Use of the Licensed Property.

D. The License Grant and Permitted Use are subject and subordinate to Con Edison's Use For Public Utility Functions and Con Edison's use is primary. If Licensee's Wireless Facilities, and/or the operation thereof, cause interference with any Con Edison Facilities or equipment, or interfere or disrupt Con Edison's Use for Public Utility Functions, such interference or disruption to be determined in the sole discretion of Con Edison, the interference or disruption shall be stopped within seven (7) days (or such shorter period as required by Con Edison), or the Wireless Facilities causing the interference or disruption will be shut down and disconnected until such interference or disruption is corrected.

E. The License Grant shall be extended to additional Con Edison Facilities the location of which must be documented in a writing signed by authorized representatives of both parties, which describes the additional Licensed Property to be added to the License Grant.

F. The License Grant to Licensee, subject to the Standard Terms and Conditions, the Operating Procedure, all applicable federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes, and the terms and conditions of all applicable governmental and non-governmental franchises, permits, authorizations, and approvals, shall include the right to access the Licensed Property 7 days a week, 24 hours a day for the purpose of constructing, installing maintaining and operating Licensees Wireless Facilities.

G. Other than the right to use the Licensed Property for the Permitted Use in accordance with the terms and conditions hereof, including the Standard Terms and Conditions and the Operating Procedure, this Service Agreement does not grant any right to use any Con Edison property for any purpose.

H. Without limitation of any other condition, limitation, or restriction imposed by this Service Agreement or any other agreement between the parties, to the extent that Licensee Wireless Facilities require electric services on any Licensed Property, Licensee shall be required to comply with any additional terms and conditions that may be imposed by Con Edison's electric tariff, PSC No. 9 – Electricity. In such case, Con Edison shall prepare and Licensee shall execute such agreement(s) as may be required to carry out the intention of this paragraph.

I. Without limitation of any other condition, limitation, or restriction imposed by this Service Agreement or any other agreement between the parties, to the extent that Licensee Wireless

Facilities require Span Wire Attachments in the Communications Zone on any Licensed Property, Licensee shall be required to comply with any additional terms and conditions that may be imposed by the standard Con Edison Pole Attachment Agreement then in effect. In such case, Con Edison shall prepare and Licensee shall execute such agreement(s) as may be required to carry out the intention of this paragraph.

J. Con Edison shall not be required to perform any service or grant any rights provided for in the Service Agreement if it is contended by any municipality having control over public rights-of-way through which the services/occupancies are being requested that Con Edison is without authority to perform such services or permit such occupancies. Nothing in the Service Agreement shall preclude the Licensee from exercising any rights it may have in relation to the relevant municipal authority.

Article III
Terms and Conditions/Operating Procedures/Rider K

This Service Agreement incorporates by reference the charges, fees, procedures, and terms and conditions set forth in the following documents: (1) Operating Procedure, (2) Standard Terms and Conditions, and (3) PSC No. 9 – Electricity, Rider K. Licensee acknowledges that it has read and become familiar with these documents and agrees to abide by the terms and conditions set forth therein as if such terms and conditions were included in this Service Agreement. Licensee further acknowledges and agrees that the Standard Terms and Conditions and Operating Procedure are subject to change by Con Edison upon thirty (30) days prior written notice to Licensee.

Article IV
No Warranties from Con Edison Concerning Licensed Property or Permitted Use;
Licensee's Satisfaction with the Licensed Property;
Licensee's Acknowledgment Concerning Risk of Damage
to Licensed Property and Wireless Facilities

A. Con Edison does not make, and hereby disclaims, any express, implied, statutory, or common law warranty, guaranty or representation concerning the Licensed Property or its suitability for the Permitted Use. **WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, CON EDISON DOES NOT MAKE, AND HEREBY DISCLAIMS ANY EXPRESS, IMPLIED, STATUTORY, OR COMMON LAW WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

B. Licensee represents that it has visited, examined, and/or analyzed the Licensed Property, has knowledge of all limitations, restrictions, and conditions, legal, physical, or otherwise, concerning the Licensed Property including, without limitation, such limitations, restrictions and conditions as may affect the suitability of the Licensed Property for the Permitted Use, and that Licensee is satisfied with the suitability of the Licensed Property for the Permitted Use. **LICENSEE ACKNOWLEDGES THAT THE WIRELESS FACILITIES WILL BE**

LOCATED ON LICENSED PROPERTY THAT IS IN CLOSE PROXIMITY TO ELECTRICAL CABLES THAT ARE SUBJECT TO FAULT, BURNOUT OR OTHER MALFUNCTION WHICH CAN RESULT IN DAMAGE, DESTRUCTION OR DISRUPTION TO THE WIRELESS FACILITIES AND THAT, WITHOUT LIMITATION, THE RISK OF SUCH DAMAGE, DESTRUCTION OR DISRUPTION IS AMONG THOSE RISKS COVERED BY THE STANDARD TERMS AND CONDITIONS REFERENCED IN ARTICLE III.

Article V

Wireless Attachment License Fees

A. Licensee shall pay Con Edison for each licensed attachment to Con Edison Facilities License Fees in the amount of \$1,200.00 per annum. The rental shall be payable in semiannual advance installments, January 1 and July 1 of each year this Agreement remains in effect, and billed the immediately preceding December 15 and June 15, respectively.

B. Within 30 days of the effective date of this Service Agreement, Licensee shall pay all applicable License Fees.

C. Con Edison may revise the License Fees annually to become effective with the July 1 payment for any year this agreement remains in effect. Con Edison shall provide Licensee at least sixty (60) days written notice prior to any change in the License Fees. Following any upward revision to the Licensee Fees, Licensee may, upon thirty (30) days written notice to Con Edison, terminate this Agreement, without further obligation. Such termination shall not effect any obligation, financial or otherwise, incurred by Licensee prior to the termination, including, but not limited to, the obligation to remove Licensee's Wireless Facilities from Con Edison Facilities.

D. Charges for Make Ready Work are separate and apart from the License Fees and described in the Operating Procedure. In no event will charges for Make Ready Work be subject to refund.

E. For each Unlicensed Licensee attachment discovered on Con Edison Facilities, Licensee shall pay to Con Edison an amount equal to five (5) years rental, as described in section V(A) above.

F. If rentals or other charges have not been paid within 30 days of bill mailing, late payment charges pursuant to Edison's electric rate schedule (PSC No. 9) shall be assessed on the arrears. Con Edison may suspend work under this Service Agreement whenever arrears occur, resuming only after the arrears and late payment charges have been paid.

Article VI
Term of Service Agreement

A. The Term of the Service Agreement shall be five (5) years. Upon any renewal, Licensee must obtain any necessary permits, approvals and/or authority from the relevant municipal authority. Additional Licensed Property may be added from time to time, provided that Licensee and Con Edison agree in writing to the additional Licensed Property.

B. Licensee may give up any license by removing the attachment upon ten (10) days notice. Specific requirements for the rescission of licenses are detailed in the Operating Procedures.

C. Notwithstanding the provisions of Article VI(A), this Service Agreement shall be subject to termination by Con Edison upon 15 days' written notice, upon any final regulatory or judicial determination that Licensee's facilities have been used in violation of any law or in aid of any unlawful act.

D. Irrespective of the Term of the Service Agreement, insurance coverage and financial security must be renewed and/or updated annually.

Article VII
Insurance and Financial Security

Insurance and Financial Security shall be provided in accordance with the Standard Terms and Conditions for Wireless Facilities.

Article VIII
Liability

To the fullest extent permitted by law, Con Edison and Verizon shall not be liable to Licensee or to Licensee's customers (and, to the fullest extent permitted by law, Licensee hereby agrees to indemnify, protect and save harmless Con Edison and Verizon against any claim by Licensee's customers or any other person or entity) relating to or arising from any interruption to Licensee's service, any interference with the operation of Licensee's Wireless Facilities, from any cause, or any other damage suffered by Licensee or its customers, whether or not the interruption, interference, or damage is caused by the negligence or misconduct of Con Edison or its agents or Verizon. To the fullest extent permitted by law, Licensee waives any claim for consequential damages or lost profits.

Article IX
Representations and Warranties of Licensee

Licensee makes the following representations and warranties to Con Edison as of the date of this Service Agreement:

- (i) Licensee is a corporation duly organized and validly existing under the laws of the state of New York and has all the necessary power and authority to execute, deliver and perform its obligations under this Service Agreement. Licensee represents that, before making any attachments, it shall obtain all appropriate governmental authority to do business and to erect and maintain its facilities in public highways.
- (ii) The execution, delivery and performance by Licensee of this Service Agreement does not conflict with, or constitute a breach of or a default under, any law, regulation, order, license, contract or instrument to which Licensee is subject or by which Licensee is bound.
- (iii) This Service Agreement constitutes the valid and binding agreement of Licensee, enforceable against Licensee in accordance with its terms.

Article X
Representations and Warranties of Con Edison

Con Edison makes the following representations and warranties to Licensee as of the date of this Service Agreement:

- (i) Con Edison is a corporation duly organized and validly existing under the laws of the state of New York and has all the necessary power and authority to execute, deliver and perform its obligations under this Service Agreement.
- (ii) The execution, delivery and performance by Con Edison of this Service Agreement does not conflict with, or constitute a breach of or a default under, any law, regulation, order, license, contract or instrument to which Con Edison is subject or by which Con Edison is bound.
- (iii) This Service Agreement constitutes the valid and binding agreement of Con Edison, enforceable against Con Edison in accordance with its terms.

Article XI
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 shall send a second written notice to the breaching party notifying the breaching party that this Service Agreement is terminated. Notwithstanding the foregoing, (a) Con Edison may terminate on shorter notice than provided above and/or without any opportunity by Licensee to cure if Licensee interferes with any contract, mortgage, lien, encumbrance, restriction, lease, license, easement, right, or privilege affecting the Licensed Property or use of the Licensed Property to which the License Permitted Use are subject and subordinate pursuant to this Service Agreement if such shorter notice and/or no opportunity to cure is necessary to protect the interests of Con Edison or any other party under or with regard to any such contract, mortgage, lien, encumbrance, restriction, lease, license, easement, right, or privilege (provided, however, that a cure period shall be granted by Con Edison unless granting a cure period would violate the other contract, mortgage, lien, encumbrance, restriction, lease, license, easement, right, or privilege); and (b) Con Edison may terminate this Service Agreement immediately upon sending written notice of such termination to Licensee, without any opportunity by Licensee to cure, if Licensee interferes with any Use For Public Utility Purposes as defined Article I.

Article XII
Force Majeure

Without limitation of any other provision of this Service Agreement that limits liability or conditions any obligation to perform, neither Party shall have any liability for any delay in performing or any failure to perform caused by any event or occurrence beyond its reasonable control, including but not limited to acts of God, earthquakes, extraordinary weather conditions, accidents such as fires or explosions not due to the negligence of the party claiming the force majeure event as the reason for a delay in performing or failure to perform, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), and acts or failures to act of governmental authorities.

Article XIII
Miscellaneous Provisions

A. Entire Agreement. This Service Agreement, together with its referenced documents, constitutes the entire agreement and understanding between the parties relating to the subject matter hereof. Any prior written or oral agreements, representations, warranties, promises or understandings between the parties relating to such subject matter are merged in this Service Agreement. Any amendments to this Service Agreement must be in writing and executed by authorized representatives of both parties. No waiver of any right under this Service Agreement shall be effective unless in writing and signed by an authorized representative of the party granting such waiver and such waiver shall be effective only with respect to the particular event expressly referred to in such signed writing.

B. Governing Law. This Service Agreement will be governed by the laws of the State of New York, without regard to such State's conflict of laws rules.

C. Successors and Assigns/Assignment. This Service Agreement shall apply to and bind the successors and permitted assigns of the parties provided, however, that neither Party may assign this Service Agreement without the prior express written consent of the other party, which consent shall not unreasonably be withheld. Any purported assignment without such prior express written consent shall be void. Notwithstanding the foregoing, however, (i) either party may, without the other party's consent, assign this Service Agreement to (1) a parent corporation or other organization that owns or controls a majority interest in such party, or (2) a corporation or other organization that is entirely owned or controlled by the same corporation or other organization that entirely owns or controls such party, or (3) a corporation or other organization that is entirely owned or controlled by such party. Unless otherwise agreed in a writing signed by authorized representatives of both parties, any assignment of this Service Agreement, whether or not requiring consent of the other party: (1) shall be conditioned on the assignee expressly assuming all of the obligations of the assignor under this Service Agreement and (2) shall not be a novation or otherwise release or discharge the assignor from any of its obligations under this Service Agreement.

D. Counterparts. This Service Agreement may be signed in one or more counterparts, each of which is an original for all purposes but all of which taken together constitute only one instrument.

E. Severability. If any provision of this Service Agreement or any application of any such provision is held by a court of competent jurisdiction to be invalid or unenforceable, the affected provision or application shall be stricken or limited so as to give it the effect intended to the fullest extent permitted by law, and the remaining provisions of this Service Agreement and applications of such provisions shall continue in full force and effect.

F. Notices. All notices and other communications hereunder required to be in writing shall be personally delivered, mailed by registered or certified mail, return receipt requested, postage paid, or transmitted by facsimile, as provided below. A party may change its address/facsimile number for receipt of written notices by notifying the other party in writing of such change pursuant to this Paragraph F.

If to Con Edison

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

Telephone: (212) 780-6450
Facsimile: (212) 780-6462

If to Licensee

Attn: _____

Telephone: _____

Facsimile: _____

Such notice or other communication shall be deemed duly given when received or refused by the addressee.

G. Submission To Jurisdiction/Choice Of Forum/Service Of Process. The parties hereby irrevocably submit to the jurisdiction of the courts located within the State of New York with regard to any controversy arising out of or relating to this Service Agreement. The parties agree that service of process on each other in relation to such jurisdiction may be made, at the option of the serving party, by certified or registered mail, return receipt requested, postage prepaid addressed as set forth below by actual personal delivery to the party to be served at the address set forth below:

If Con Edison Is The Party To Be Served

Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1618-S
New York, New York 10003
Attn: Office Of The Secretary

If Licensee Is The Party To Be Served

Attn: _____

A party may change its address/facsimile number for receipt of service of process by notifying the other party in writing of such change. Service of process pursuant to this Paragraph shall be deemed to be sufficient even under circumstances where, apart from this Service Agreement, there would be no jurisdictional basis for such service. Service of process on a Party may also be effected in any manner permitted by law. The Parties consent to the selection of the New York City, New York State and United States courts situated within the City of New York or Westchester County (State of New York) as the exclusive forums for any legal proceeding arising out of or relating to this Service Agreement.

H. No Third Party Rights. Except as may be expressly provided herein, nothing in this Service Agreement is intended or shall be construed to grant any rights or benefits to any entity or person other than the parties and their successors and permitted assigns.

I. No Brokers. Con Edison and Licensee each represent and warrant that no broker or other third party brought about the execution and delivery of this Service Agreement and no discussion or other contact was had with any broker or other third party which could be the basis of a claim for any brokerage commission, finder's fee or similar payment arising from, related to, or connected with this Service Agreement ("Broker Claims"). Each party agrees to defend, indemnify, and hold the other party harmless from any and all Broker Claims arising from, related to, or connected with the indemnifying party's discussion or other contact with any broker or other third party.

J. Service Agreement Not Binding Until Executed And Delivered. No portion of this Service Agreement is binding upon a party hereto until it is executed by an authorized representative 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.

Approved, agreed to and accepted by Licensee:

Sign: _____

Print: _____

Title: _____

Date: _____

Approved by:
Consolidated Edison Company of
New York, Inc.

By: _____
Senior Vice President

Date: _____

WIRELESS FACILITIES SERVICE AGREEMENT²

Effective Date _____

Exhibit A-Pre-Survey Walk Form
(Subject to Trade Secret Protection)

See Pre-Survey Walk Sheet Attached



WalkSheet2.xls

Licensee: _____

Con Ed: _____

Title: _____

Title: _____

² Rates, Rules and Regulations concerning attachments to Con Edison's electric distribution poles are contained under Rider K – Pole Attachment Rental Rate, of the Company's electric rate schedule, P.S.C. No. 9 – Electricity, and all requests for such access shall be detailed in this Service Agreement, but shall be handled in accordance with Rider K and other pre-existing Con Edison procedures including the Distribution Pole Attachment Standard Form of License and Distribution Pole Attachment Operating Procedures.