

This Confidentiality and Nondisclosure Agreement (“Agreement”) is made on [REDACTED], 200[REDACTED] by and between Exelon Business Services Company, LLC, acting for itself or on behalf of certain of its affiliated companies (“Exelon”) and [REDACTED] (“Vendor”) (collectively, the “Parties”).

- A. Exelon and Vendor intend to engage in discussions concerning a potential business relationship whereby Vendor would provide to Exelon materials, equipment and services related to [insert description of transaction] (the “Proposed Transaction”).
- B. In connection with these discussions, Vendor may disclose to Exelon, orally, in writing, by inspection or otherwise, Confidential Information (as defined below).
- C. The Parties desire to formally set forth their understanding and agreement with respect to the treatment to be accorded to the Confidential Information and have done so in the provisions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

1. For purposes of this Agreement, the term “Confidential Information” is defined to mean any knowledge, data, statistics, business plans, records, trade secrets, business secrets, operational methods, customer lists, concepts, ideas, policies, any social security numbers, and/or other information or data disclosed by Vendor and/or its officers, employees, agents, consultants, or representatives (collectively “Vendor Employees”) to Exelon and/or its officers, employees, agents, consultants, or representatives (collectively “Exelon Employees”), which is not otherwise available to the public or Vendor’s competitors, including both the existence and contents of this Agreement. The term “Confidential Information” also includes, without limitation, the existence of the discussions between the Parties concerning the Proposed Transaction. The term “Confidential Information” does not include information which (1) is or becomes generally available to the public other than as a result of disclosure by Exelon Employees, (2) was within Exelon’s lawful possession prior to being furnished by Vendor Employees on a non-confidential basis, (3) becomes available to Exelon on a non-confidential basis from a source other than Vendor Employees that is under no obligation to Vendor to keep such information confidential, or (4) is developed by or for Exelon without any use of or reliance upon Confidential Information. All such Confidential Information shall be clearly identified and marked as “confidential” or “proprietary”; provided, that any information conveyed orally shall be summarized in writing by Vendor to Exelon, and shall be transmitted, marked “Confidential Information”, to Vendor within 5 days after such oral disclosure.
2. All Confidential Information related to the Proposed Transaction obtained prior to the execution of this Agreement shall also be subject to the terms of this Agreement.
3. Exelon shall retain any Confidential Information in strictest confidence and shall not use, exploit, or disclose, or permit the use, exploitation, or disclosure of any Confidential Information obtained from Vendor, except to persons or entities directly involved in the Proposed Transaction and then, only to the extent necessary in connection with the Proposed Transaction, or as otherwise required by law. Exelon shall inform Exelon Employees to whom Confidential Information is disclosed of the existence of this Agreement and of its provisions, and that the Confidential Information has been shared with Exelon in strict confidence. Exelon will be responsible for any breach or anticipated breach of this Agreement by any employee or third party to whom it discloses Confidential Information. Exelon shall apply the same standard of care to the Confidential

Information as it applies to its own confidential information. However, Exelon shall not be liable for indirect, incidental or consequential, or punitive damages, including, but not limited to, any claim for lost profits, of any nature or kind resulting from or arising in connection with this Agreement.

4. For a period of one (1) year from the date hereof, Exelon shall not, either directly or indirectly, publish or disclose any Confidential Information subject to this Agreement or use such Confidential Information for the benefit of itself, any party, or any third parties without the prior written consent of Vendor. In the event that Exelon terminates discussions with respect to the Proposed Transaction for any reason, Exelon shall use its best efforts to destroy or render inaccessible to any employee or third party the Confidential Information obtained in connection with the Proposed Transaction.
5. Exelon shall not, without the prior written consent of Vendor, make any public statement, announcement or release with respect to the Proposed Transaction, including, without limitation, the existence of the discussions between the Parties concerning the Proposed Transaction. Notwithstanding the foregoing, either Party may make such disclosures as may be necessary to comply with the requirements of any applicable law, governmental order or regulation in connection therewith.
6. Exelon acknowledges that a breach of the terms, covenants or conditions contained in this Agreement will cause irreparable damage to Vendor for which a remedy at law would not be adequate. In the event of such breach or threatened breach, Vendor shall be entitled to seek appropriate injunctive relief in any court of competent jurisdiction, restraining Exelon Employees from any such threatened or actual violation of the provisions of this Agreement. This provision does not limit Vendor's rights to seek monetary damages in addition to injunctive relief.
7. In the event that Exelon's Employees, are requested or required to disclose any Confidential Information subject to this Agreement in a legal or regulatory proceeding, Exelon shall provide Vendor with prompt written notice of any such request or requirements in order to provide Vendor an opportunity to seek a protective order or other appropriate remedy. Exelon shall cooperate with Vendor and its counsel in Vendor's efforts to prevent such disclosure of Confidential Information. Notwithstanding the foregoing or any other provision of this Agreement, Exelon may, without prior notice to Vendor, disclose in a regulatory proceeding any Confidential Information subject to this Agreement, provided that Exelon has obtained a protective order or confidentiality agreement for such Confidential Information applicable to that proceeding.
8. No Party, by execution of this Agreement, is committed to the consummation of the Proposed Transaction until such time as a definitive agreement is reached by and between the Parties.
9. Subject to the restrictions on the use and disclosure of Confidential Information in this Agreement, neither the discussions between the Parties with respect to the Proposed Transaction nor the disclosure of Confidential Information shall be construed as requiring any Party to refrain from engaging in any business the same as or similar to the business in which the other is now engaged.
10. Either Party may terminate this Agreement at any time, and for any reason, by sending written notice of its intent to do so to the other. Notwithstanding any such termination, all rights and obligations hereunder shall survive, with respect to Confidential Information disclosed prior to such termination, unless superseded by definitive other agreement of the Parties.

- 11. This Agreement shall be governed by the laws, but not the rules relating to the choice of law, of the Commonwealth of Pennsylvania. The Parties agree that the federal and state courts sitting in the City of Philadelphia shall have personal jurisdiction over all Parties and any action involving a dispute under this Agreement shall have as its venue a court located in the City of Philadelphia.
- 12. This Agreement and all of its terms and provisions shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, as may be permitted.
- 13. The invalidity or non-enforceability of any term or provision contained in this Agreement shall not void or impair this Agreement’s remaining provisions, which shall remain in full force and effect as if no such invalid or unenforceable provision existed.
- 14. This Agreement may be executed in two or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement.
- 15. The undersigned certify that they are authorized to execute this Agreement on behalf of their respective companies.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the date first written above.

**EXELON BUSINESS SERVICES COMPANY,  
LLC**

**VENDOR: [INSERT VENDOR NAME]**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_