

SYSTEM HARDWARE PURCHASE AGREEMENT

Between
[insert name of Exelon entity],
[acting by and through its agent,
Exelon Business Services Company]

and

Dated as of _____, 200_

TABLE OF CONTENTS

	Page
1. DEFINITIONS	4
2. EQUIPMENT PROCUREMENT	4
3. GRANT OF LICENSE	5
4. INSTALLATION SERVICES	6
5. TRAINING SERVICES	6
6. MAINTENANCE SERVICES	6
7. TERM	7
8. PAYMENT	7
9. ACCEPTANCE OF DELIVERABLES AND TESTING	8
10. SOURCE CODE	11
11. CONFIDENTIALITY	12
12. REPRESENTATIONS AND WARRANTIES	13
13. INSURANCE	15
14. INDEMNITIES	15
15. LIMITATION OF LIABILITY	17
16. TERMINATION	17
17. GENERAL	18
 Schedule A SYSTEM	
 Schedule B FEES	
 Schedule C SYSTEM INSTALLATION	
 Schedule D TRAINING	
 Schedule E MAINTENANCE	

TABLE OF CONTENTS

Exhibit 1	DEFINITIONS
Exhibit 2	CERTAIN VENDOR SERVICES-RELATED RESPONSIBILITIES
Exhibit 3	REQUIRED VENDOR INSURANCE COVERAGES

SYSTEM HARDWARE PURCHASE AGREEMENT

This System Hardware Purchase Agreement, effective as of _____, 200__ (the “Effective Date”) is entered into by and between _____, a _____ with offices at _____ (“Vendor”), and [insert the EXELON entity] [acting by and through its agent, Exelon Business Services Company], a Pennsylvania corporation with offices at 10 South Dearborn Street, Chicago, Illinois 60603 (“Exelon”). As used in this Agreement, “Party” means either Exelon or Vendor, as appropriate, and “Parties” means Exelon and Vendor.

WHEREAS, Exelon wishes to purchase the computer equipment and to license the related software and documentation identified herein (collectively, the “System”), and to purchase the necessary implementation and training services in connection with the System; and

WHEREAS, Vendor desires to sell and license to Exelon such a System, and to provide such necessary implementation and training services.

NOW, THEREFORE, Vendor and Exelon agree as follows:

1. DEFINITIONS**1.1 Terms.**

Certain terms used in this Agreement are defined in **Exhibit 1**. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context. The word “and” shall mean “and” as well as “or,” unless otherwise specified.

2. EQUIPMENT PROCUREMENT**2.1 Equipment and Price.**

- (a) Subject to the terms of this Agreement, Vendor shall sell, assign, convey, transfer and deliver to Exelon, and Exelon shall purchase, receive and accept from Vendor, all right, title and interest in and to the Equipment listed in **Schedule A**.
- (b) Vendor shall not make any substitute for the Equipment of any other model, capacity, or manufacturer without the prior written consent of Exelon.

2.2 Delivery.

Vendor shall arrange for delivery of the Equipment to the delivery site identified by Exelon (the “Delivery Site”). Shipment of the Equipment shall be F.O.B. the Delivery Site. In addition to paying all transportation charges for the Equipment, Vendor shall insure, and pay all insurance charges for, the Equipment applicable to the period of time prior to Acceptance of the System by Exelon.

2.3 Title to Equipment.

Title to and ownership of the Equipment designated as being purchased by Exelon hereunder shall remain vested in Vendor until Acceptance by Exelon under the terms hereof, at which time Vendor shall execute and deliver a bill of sale acceptable to Exelon for the Equipment at the prices set forth in **Schedule A**.

2.4 Financing Option.

Vendor understands and agrees that, at Exelon's option, some or all of the Equipment may be financed or leased through a third-party (hereinafter the "Third-Party Lessor"). Vendor agrees to sell the Equipment to any such Third-Party Lessor as Exelon may in writing direct upon the same or equivalent terms and conditions as set forth herein with respect to the sale to Exelon. Vendor shall execute and deliver any documents necessary to effect such financing or leasing transaction. Any representations made by Vendor or warranties extended by Vendor herein shall continue to run to Exelon and be enforceable by Exelon irrespective of Exelon's entering into a financing or leasing transaction involving transfer of title or direct purchase by Third-Party Lessor.

2.5 Attachments.

Exelon shall be entitled to install an attachment, feature or device to the Equipment, or make modifications, changes, enhancements, upgrades, or additions to the Software, without affecting Vendor's representations and warranties hereunder, unless Vendor, within a reasonable time not to exceed five (5) days after receipt from Exelon of written notice of its intention to do so, provides written notice to Exelon stating grounds which, in Exelon's sole determination are reasonable, upon which Vendor concludes such attachment, feature, device, modification, change, enhancement, upgrade or addition shall materially or adversely affect the System, thereby materially increasing Vendor's burden of compliance with certain identified sections of this Agreement (the "Affected Obligations"). If the grounds set forth in the notice are determined by Exelon to be reasonable and Exelon employs such feature, device, modification, change, enhancement, upgrade or addition, Vendor shall not be liable for the resulting adverse effect on the Affected Obligations to the extent attributable to such action by Exelon. If the grounds set forth in the notice are determined by Exelon to not be reasonable and Exelon employs such feature, device, modification, change, enhancement, upgrade or addition, Vendor shall be liable for the resulting adverse effect on the Affected Obligations.

3. **GRANT OF LICENSE**

3.1 Grant of License.

- (a) Except as may be expressly modified in **Schedule A**, Vendor hereby grants to Exelon a perpetual, nonexclusive, royalty-free, worldwide, and nontransferable license (the "License") to use and copy the Software during the Term. The License includes the use and copying of the Software by Exelon Affiliates. All use and copying by Exelon Affiliates shall, for the purposes of this Agreement, be deemed to be use and copying by Exelon. Exelon may make an unlimited number of copies of the Software for its internal use.
- (b) The License includes the right of Exelon to designate one (1) or more consultants, auditors, and other third-party service providers to use and copy the Software for the benefit of Exelon. To the extent any third-party service provider has used or copied the Software for the benefit of Exelon, such third-party service provider will be obligated to

agree to protect the confidentiality of the Software to the same extent this Agreement obligates Exelon to protect the confidentiality of the Software.

3.2 Open Source or Copyleft Licenses.

Without Exelon's prior written approval, Vendor will not use in performing the Services, and the Software will not incorporate, link to, call, or depend in any way upon, any software or other intellectual property that is subject to an Open Source or Copyleft license (including the GNU General Public License) or any other agreement that may give rise to any third-party's right to use the Software or to limit Exelon's rights under this Agreement or to Exelon's Intellectual Property Rights.

3.3 Section 365(n) of the Bankruptcy Code.

All rights and licenses granted under or pursuant to this Agreement by Vendor to Exelon (including the License) are, and shall otherwise be deemed to be, for the purposes of Section 365(n) of the United States Bankruptcy Code (the "Bankruptcy Code"), licenses to rights in "intellectual property" as defined under the Bankruptcy Code. As licensee of such rights under this Agreement, Exelon shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code. Upon the event of the commencement of bankruptcy proceedings by or against Vendor under the Bankruptcy Code, Exelon shall be entitled to retain all of its rights under this Agreement (including the License).

4. **INSTALLATION SERVICES**

4.1 Installation Services.

Vendor will provide the Installation Services pursuant to the terms hereof and as set forth in **Schedule C**. The Installation Services will be provided subject to and in compliance with the requirements set out in **Exhibit 2**.

5. **TRAINING SERVICES**

5.1 Training Services.

Vendor will provide the Training Services pursuant to the terms hereof and as set forth in **Schedule D**. The Training Services will be provided subject to and in compliance with the requirements set out in **Exhibit 2**.

6. **MAINTENANCE SERVICES**

6.1 Equipment Maintenance Services.

Vendor will provide the Equipment Maintenance Services pursuant to the terms hereof and as set forth in **Schedule E**. The Equipment Maintenance Services will be provided subject to and in compliance with the requirements set out in **Exhibit 2**.

6.2 Software Maintenance Services.

Vendor will provide the Software Maintenance Services pursuant to the terms hereof and as set forth in **Schedule E**. The Software Maintenance Services will be provided subject to and in compliance with the requirements set out in **Exhibit 2**.

7. TERM

7.1 Term.

The term of this Agreement (the “Term”) begins on the Effective Date and ends in accordance with the terms of this Agreement or upon written agreement of the Parties.

8. PAYMENT

8.1 Fees.

- (a) Provided Vendor is not in breach of this Agreement, Exelon will pay Vendor the fees set forth in **Schedule B** for the System and Services in accordance with this Agreement.
- (b) Unless otherwise specified in **Schedule B**, payment of the fee for the System is due upon Exelon’s Acceptance of the System.

8.2 Terms of Payment.

Exelon will pay properly submitted, valid invoices within forty-five (45) days after its receipt thereof. Exelon shall not be required to pay for charges that are not timely billed. All payments shall be made in U.S. dollars.

8.3 Incidental Expenses.

Exelon will reimburse Vendor for reasonable, documented travel, lodging and meal expenses of Vendor personnel engaged in performing Services under this Agreement only if such expenses are incurred in response to a special request by Exelon in writing. In the event such request by Exelon is due to a problem with the Services attributable to Vendor, there will be no such reimbursement. Any authorized travel-related expenses will be reimbursable in accordance with Exelon’s policies that apply to its own personnel. Except as provided above, all of Vendor’s expenses incurred in performing the Services are included in the fees for Services set forth in **Schedule B**.

8.4 Disputed Amounts.

Exelon may withhold payment of any charges that it disputes in good faith, and may set-off amounts Vendor owes Exelon as credits against charges payable to Vendor under this Agreement.

8.5 Taxes.

- (a) Each Party will be responsible for any taxes on property it owns or leases, for any franchise or privilege tax on its business, and for any tax based on its gross or net income or gross receipts.
- (b) Vendor will pay for any tax on goods or services it uses to provide the System or Services.
- (c) Vendor will pay and Exelon will reimburse Vendor for any federal, state, or local sales, use, excise, or similar tax applicable to the provision of the System or of the Services, if any.
- (d) The Parties will cooperate to more accurately determine and minimize their respective tax liability. Each Party will provide tax information or tax documents reasonably requested

by the other Party. Each Party will promptly notify the other of any claim for taxes asserted by a taxing authority with jurisdiction over either Party. With respect to any claim arising out of a form or return signed by a Party to this Agreement, the signing Party may control the response to and settlement of the claim, but the other Party may participate to the extent it may be liable.

8.6 Most Favored Customer.

- (a) If Vendor sells to another person or entity a system comprised of (i) computer equipment which is the same as or substantially similar to the Equipment (in functionality and number) and (ii) a grant of license to the Software similar in scope to the License and the fees charged to such purchaser/licensee are lower, in the aggregate, than the fees charged to Exelon under this Agreement, Vendor shall so inform Exelon promptly (but not later than thirty (30) days) after such sale the fees charged to Exelon hereunder shall be equitably adjusted to provide Exelon the benefit of such lower fees. Such adjustment, as it relates to license fees for the Software, shall be retroactive to the first date on which the lower charges to the other purchaser/licensee became effective.
- (b) If Vendor provides the same or substantially similar maintenance services (either for equipment or software) to another purchaser/licensee and the fees charged to such purchaser/licensee for such services are lower, in the aggregate, than the fees charged to Exelon under this Agreement, Vendor shall so inform Exelon promptly (but not later than thirty (30) days) after the commencement of such services and the fees charged to Exelon hereunder shall be equitably adjusted to provide Exelon the benefit of such lower fees. Such adjustment shall be retroactive to the first date on which the lower charges to the other purchaser/licensee became effective.
- (c) Within thirty (30) days after the Effective Date and on each anniversary of such date during the Term thereafter, Vendor's President or Chief Financial Officer shall certify in writing to Exelon that Vendor is in compliance with this Section 8.6, and shall provide the information reasonably requested by Exelon to verify such compliance.

9. ACCEPTANCE OF DELIVERABLES AND TESTING

9.1 Acceptance of Deliverables.

The successful completion of the Project requires the acceptance by Exelon of all Deliverables prepared and delivered pursuant to the Project, including the System. Upon completion of a Deliverable, Vendor will notify Exelon in writing that the Deliverable has been completed and, in the case of Deliverables constituted of software and/or equipment ("Operational Deliverables"), tested and/or certified as being ready for acceptance ("Ready for Acceptance") by Exelon. Promptly after receiving such notice, Exelon will evaluate the Deliverable for acceptance in accordance with this Article 9. The acceptance process outlined below shall not be deemed to extend the scheduled completion date for any Deliverable specified in the Project Plan.

9.2 Acceptance Procedure.

Acceptance by Exelon ("Acceptance") requires that the Deliverables be confirmed in writing by Exelon to meet applicable acceptance criteria ("Acceptance Criteria") which, in the case of Operational Deliverables, will include the successful completion of agreed to acceptance and performance testing and, in the case of the System as a whole, will include meeting the specifications, performance standards and

functional requirements set out in Schedule A. In the case of Deliverables that are component parts of the System, in addition to acceptance of the component Deliverables, the System will also be subject to Acceptance in its entirety. Vendor shall prepare and propose the test procedures, which shall be described in the Acceptance Criteria for each Deliverable and shall be subject to agreement by Exelon. The Acceptance tests and test procedures shall be sufficiently broad in scope and rigorous so as to verify that the System and all other Deliverables meet all applicable specifications, acceptance criteria and performance requirements, including assurance that the Deliverables and the System meet such tests of operational integrity as may be reasonably required by Exelon. In the case of the System, the Acceptance tests shall consist of unit tests, a system test, and/or stress test. Acceptance procedures for written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

(a) Written Deliverables.

- (i) Vendor may submit interim drafts of written Deliverables (e.g., system designs and documentation) to Exelon for review. Exelon agrees to review each interim draft within a reasonable period of time after receiving it from Vendor. When Vendor delivers a final written Deliverable to Exelon, Exelon will have the opportunity to review such written Deliverable for an acceptance period of fifteen (15) days or such other period as is stated in the Project Plan (the “Acceptance Period”). In all cases, Exelon’s obligation to review a written Deliverable within the applicable Acceptance Period will be contingent on such written Deliverable being delivered to Exelon as scheduled. If and to the extent any written Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such written Deliverable shall be extended as reasonably necessary to accommodate the availability of the Exelon personnel responsible for reviewing such Deliverable. Similarly, if and to the extent multiple written Deliverables are delivered to Exelon within an Acceptance Period, the Acceptance Period for all such written Deliverables shall be extended as reasonably necessary to accommodate the availability of the Exelon personnel responsible for reviewing them.
- (ii) Exelon agrees to notify Vendor in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted in the form delivered by Vendor or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If Vendor does not receive any such notice from Exelon by the end of the Acceptance Period, Vendor shall promptly notify Exelon in writing that no such notice has been received. If Vendor does not receive the required notice within seven (7) days after Exelon receives such written notification from Vendor, such written Deliverable will be deemed to be accepted by Exelon.
- (iii) If Exelon delivers to Vendor a timely notice of deficiencies, Vendor will correct the described deficiencies as quickly as possible and, in any event, within ten (10) days after Exelon notifies Vendor of the of deficiencies (unless otherwise specified in the Project Plan). Upon receipt of a corrected written Deliverable from Vendor, Exelon will have a reasonable additional period of time to review the corrected written Deliverable.

(b) Operational Deliverables.

- (i) To the extent not already specified in the Project Plan, prior to the date on which Vendor is scheduled to deliver each Operational Deliverable to Exelon, Vendor and Exelon will agree upon the testing procedures for the Operational Deliverable, including without limitation detailed test cases and expected results (the “Acceptance Tests”). The Acceptance Tests will be designed to determine whether the Operational Deliverable contains any Defects. Exelon will have the opportunity during the Acceptance Period to evaluate and test each Operational Deliverable in accordance with the following procedures by executing the Acceptance Tests.
- (ii) When Vendor has completed an Operational Deliverable, Vendor will deliver the Operational Deliverable at the Installation Site (if not already there), install such Deliverable (if not already installed), and perform an installation test reasonably acceptable to Exelon to verify that the Deliverable has been properly delivered and installed. Vendor shall notify Exelon when the Operational Deliverable is Ready for Acceptance, provided that such notice shall not occur prior to the successful completion by Vendor of any installation tests. Such notice will start the Acceptance Period, which will be thirty (30) days or such other period as is stated in the Project Plan. As was the case with written Deliverables, Exelon’s obligation to review any Operational Deliverable within the applicable Acceptance Period will be contingent on such Operational Deliverable being delivered to Exelon as scheduled. If and to the extent any Operational Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such Operational Deliverable shall be extended as reasonably necessary to accommodate the availability of the Exelon personnel responsible for reviewing such Operational Deliverable. Similarly, if and to the extent multiple Operational Deliverables are delivered to Exelon within an Acceptance Period, the Acceptance Period for all Operational Deliverables shall be extended as reasonably necessary to accommodate the availability of the Exelon personnel responsible for reviewing them.
- (iii) Exelon shall notify Vendor in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted in the form delivered by Vendor or describing the Defects as provided in Section 9.2(b)(iv) below. If Vendor does not receive any notice of Defects from Exelon by the end of the Acceptance Period, Vendor shall promptly notify Exelon in writing that no such notice was received. If Vendor does not receive a notice of Defects within seven (7) days after Exelon receives such written notification from Vendor, such Operational Deliverable will be deemed accepted by Exelon.
- (iv) If Exelon determines during the Acceptance Period that the Operational Deliverable as delivered by Vendor deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (a “Defect”), Exelon will inform Vendor in writing, describing the Defect(s) in sufficient detail to allow Vendor to recreate them. Vendor will correct any Defects in a Operational Deliverable as quickly as possible after receiving Exelon’s notice of the Defects and, in any event, within ten (10) days after receiving such notice (unless otherwise specified in the Project Plan), and provide the corrected Operational Deliverable to Exelon for re-testing within such ten (10) day period.

- (v) Exelon will have a reasonable additional period of time after receipt of the corrected Operational Deliverable to re-test it so as to confirm its proper functioning. Vendor will correct any further Defects identified by Exelon during the re-test as quickly as possible, but in no event more than ten (10) days after Exelon notifies Vendor of the further Defects, unless otherwise specified in the Project Plan or agreed to by Exelon.
- (c) **Correction of Deficiencies in Deliverables.**
- (i) If Vendor is unable to correct all Deficiencies preventing Acceptance of a Deliverable for which Vendor is responsible after a reasonable number of repeated efforts (but not more than three (3)), Exelon may at its election:
- allow Vendor to continue its efforts to make corrections; or
 - accept the Deliverable with its Deficiencies and reach agreement with Vendor on an equitable reduction to Vendor's charges for developing such Deliverable to reflect the uncorrected Deficiencies; or
 - terminate this Agreement for cause in accordance with the procedures set forth in Section 16.1 (except that Exelon is under no obligation to provide Vendor any further opportunity to cure) and recover its damages subject to the limitations set forth in Article 15.

9.3 Acceptance.

Exelon shall be deemed to have accepted the System upon the date of delivery to Vendor by Exelon of a notice (the "Acceptance Notice") to that effect.

10. SOURCE CODE

10.1 Escrow of Source Code.

Immediately following the Acceptance of the initial and subsequently delivered Software, Vendor, at Exelon's expense, will provide a copy of the Source Code for such initial and subsequently delivered Software to a recognized third-party escrow agent under a duly executed escrow agreement (the "Escrow Agreement"). Throughout the term of the License, Vendor shall assure that such escrowed Source Code reflects the most current version of the Software licensed to Exelon. Under the terms of the Escrow Agreement, Exelon may itself or have designated third-parties audit the escrowed Source Code for compliance with the terms of this Agreement and the Escrow Agreement.

10.2 Use of Source Code.

If Vendor fails to provide support for the Software in accordance with any maintenance agreement between the Parties due to insolvency, abandonment of licensing or supporting the Software as a line of business, or otherwise, (a) Exelon may access and use the Software's Source Code, applicable compilers, and other information and tools necessary to modify, upgrade, improve, or create derivative works from, the Source Code, either directly from Vendor or through the third-party escrow agent, as necessary for Exelon to make continued use of the Software in its business, which access and use will otherwise be governed by the terms this Agreement and by the Escrow Agreement, and (b) the License will be deemed to have been automatically amended to include the right to modify, and to authorize a third-party to

modify on Exelon's behalf, the Source Code as provided herein. Exelon's use of the Source Code under the terms of this Section 10.2 shall not constitute a termination of this Agreement.

11. CONFIDENTIALITY

11.1 Confidential Information.

- (a) As used in this Agreement, "Confidential Information" means all information, in any form, furnished or made available directly or indirectly by one Party to the other which is marked confidential, restricted, or with a similar designation. In the case of Exelon, Confidential Information also shall include, whether or not designated "Confidential Information," (i) all information concerning the operations, affairs and businesses of Exelon or its Affiliates, the financial affairs of Exelon or its Affiliates, and the relations of Exelon or its Affiliates with their respective customers, employees and service providers (including customer lists, customer information, account information and consumer markets); (ii) software and system specifications provided to Vendor by or through Exelon; and (iii) all other information or data stored on magnetic media or otherwise or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by Vendor under this Agreement. Vendor's Confidential Information shall include Vendor's proprietary methodologies. The terms and conditions of this Agreement (as well as all information regarding the negotiation of this Agreement) shall be deemed to be the Confidential Information of both Parties
- (b) For purposes of this Agreement, information shall be deemed to be disclosed by a Party if such information is disclosed by any of its officers, employees, directors, contractors, agents or representatives (other than, in the case of Exelon, disclosures by Vendor).
- (c) All Confidential Information disclosed by or on behalf of one Party to the other in the course of performing under this Agreement or to which the other gains access in connection with this Agreement shall be deemed to be the property of the disclosing Party. The receiving Party agrees to (i) receive such Confidential Information in confidence, (ii) use reasonable efforts to maintain the confidentiality of such Confidential Information and not disclose such Confidential Information to third-parties (except for the receiving Party's representatives, agents and contractors who have a need to know, are under a duty of non-disclosure with respect to such information, and are acting for the sole benefit of the receiving Party), which efforts shall accord such Confidential Information at least the same level of protection against unauthorized use and disclosure that the receiving Party customarily accords to its own information of a similar nature, (iii) use or permit the use of such Confidential Information solely in accordance with the terms of this Agreement, and (iv) promptly notify the disclosing Party in writing of any actual or suspected loss or unauthorized use, disclosure or access of the disclosing Party's Confidential Information of which it becomes aware.
- (d) The restrictions on use and disclosure set forth above shall not apply when, and to the extent that the Confidential Information: (i) is or becomes generally known to the public through no fault of the receiving Party (or anyone acting on its behalf); (ii) was previously rightfully known to the receiving Party free of any obligation to keep it confidential; (iii) is subsequently disclosed to the receiving Party by a third-party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential; (iv) is independently developed by the receiving Party or a third-party without reference to the disclosing Party's Confidential Information, or

(v) is required to be disclosed by the receiving Party as a matter of law, provided that the receiving Party uses all reasonable efforts to provide the disclosing Party with at least ten (10) days' prior notice of such disclosure and the receiving Party discloses only that portion of the Confidential Information that is legally required to be furnished pursuant to the opinion of legal counsel of the receiving Party. Notwithstanding the foregoing, neither Party shall disclose, or permit the disclosure of, the terms or conditions of this Agreement without the prior written consent of the other Party, except (A) as provided in clause (v) above, (B) to the extent necessary to permit the exercise of its rights or the performance of its obligations under this Agreement, or (C) to seek advice from its attorneys, accountants or other professional advisors.

- (e) The provisions of this Section 11.1 shall survive the termination or expiration of this Agreement for any reason. Promptly following the termination or expiration of this Agreement for any reason and, subject to the other provisions of this Agreement, the Parties shall either destroy or deliver (as the Parties mutually agree) to the furnishing Party all Confidential Information received during the performance of the Services.

11.2 No Requirement of Disclosure or Grant.

Nothing contained in Section 11.1 shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party. Nothing contained in this Article 11 shall be construed as limiting or diminishing in any respect the scope of any licenses granted under this Agreement.

12. REPRESENTATIONS AND WARRANTIES

12.1 Software.

Vendor represents, warrants and covenants that on the Acceptance Date and for a period of twelve (12) months thereafter (the "Warranty Period"), and for so long after the Warranty Period as Exelon shall purchase from Vendor maintenance and support services in respect thereof, the Software will be free of material programming errors and will operate and conform to the Documentation. Vendor also represents, warrants and covenants that the medium on which the Software is contained when delivered to Exelon will be free from defects in material or workmanship.

12.2 Services.

Vendor represents, warrants and covenants that all Services will be performed with promptness and diligence and will be executed in a workmanlike and professional manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services. Vendor represents, warrants and covenants that it shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services.

12.3 Documentation.

Vendor represents, warrants and covenants that the technical Documentation delivered to Exelon for the System will be sufficient to allow a reasonably knowledgeable information technology professional to maintain and support such Software. Vendor represents, warrants and covenants that the user Documentation for the System will accurately describe in terms understandable by a typical end user the functions and features of the System and the procedures for exercising such functions and features.

12.4 Updates.

Vendor represents, warrants and covenants that during the Warranty Period it will promptly provide Exelon with any and all Maintenance Modifications, Enhancements, and related Documentation which Vendor makes available to any other person or entity.

12.5 Equipment.

Vendor represents, warrants and covenants each of the following:

- (a) Exelon (or the Third-Party Lessor as the case may be) shall acquire good and clear title on the Equipment, free and clear of all liens and encumbrances.
- (b) The Equipment and all of its parts and components are new and unused.
- (c) The Equipment shall be free from defects in material and workmanship under normal use and that the Equipment shall remain in good working order during the Warranty Period.

The Equipment is and shall remain throughout the Warranty Period eligible for maintenance under the Equipment manufacturer's standard maintenance agreement.

12.6 System Performance.

Vendor represents, warrants and covenants that for the Warranty Period and for as long as there is a maintenance agreement in effect between the Parties, the System shall at all times perform in accordance with the specifications in the Project Documents and meet the performance requirements set out in **Schedule A**.

12.7 Ownership.

Vendor represents, warrants and covenants that: (a) Vendor is the lawful owner of the Equipment and the lawful owner or licensee of the Software and the materials used in the performance of the Services, (b) the Software and such materials have been lawfully developed or acquired by Vendor, and (c) Vendor has the right to sell the Equipment to Exelon and to grant Exelon the rights to the Software and such materials, including the rights of access to and use of the Software, which it grants under this Agreement, without the consent of any other person or entity.

12.8 Non-Infringement.

Vendor represents, warrants and covenants that (a) Vendor is not subject to any obligation that would prevent it from entering into this Agreement, and Vendor's offer to provide the System and the Services to Exelon and Exelon's acceptance of such offer has in no way caused or induced Vendor to breach any contractual obligation to any other person or entity, and (b) none of the System or any component thereof or any other materials provided by Vendor or used in connection with the performance of any Services, nor the possession or use of any of the foregoing by Exelon as contemplated by this Agreement, will infringe any Intellectual Property Right of any third-party, or contain confidential or proprietary material misappropriated by Vendor from any third-party.

12.9 Viruses and Disabling Code.

Vendor represents, warrants and covenants that (a) Vendor will ensure that no computer viruses or similar items are coded or introduced into the System or any systems used to perform the Services, and (b) Vendor will not insert into any System any code which would have the effect of disabling or otherwise shutting down all or a portion of the System or damaging any information or functionality.

12.10 Year 2000.

Vendor represents, warrants and covenants that the System shall, at no additional cost to Exelon, be able to store and process accurately any and all date and date-related data (including, but not limited to, calculating, comparing, storing, processing, recording, valuing, recognizing, validating, presenting, and sequencing) without error or malfunction before, during, and after the twentieth (20th) and twenty-first (21st) centuries, including changing accurately the calendar year to the year 2000, processing leap year calculations, and processing any other dates with unique digit arrangements such as, by way of example, 9/9/99. Exelon may, at no additional cost to itself, require Vendor to demonstrate compliance and/or compliance techniques and test procedures it intends to follow, or evidence of related representations, warranties, covenants and obligations contained herein. The representations, warranties and covenants in this Section 12.10 shall be in effect so long as the System and Services provided under this Agreement are used by Exelon or its Affiliates, and shall survive any termination or expiration of this Agreement.

12.11 Modifications.

The representations, warranties and covenants provided by Vendor under this Agreement will not be affected by Exelon's modification of any portion of the System so long as Vendor can discharge its obligations despite such modifications, or following their removal by Exelon.

12.12 Warranty Disclaimer.

OTHER THAN AS PROVIDED IN THIS AGREEMENT, THERE ARE NO EXPRESS WARRANTIES AND THERE ARE NO IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. **INSURANCE**

13.1 Insurance Coverage.

Vendor shall during the Term have and maintain in force the minimum insurance coverages specified in Exhibit 3.

14. **INDEMNITIES**

14.1 Indemnification.

Vendor will indemnify, defend and hold harmless Exelon and its Affiliates and their respective officers, directors, employees, agents, representatives, successors, and assigns, from any and all Losses and threatened Losses arising from, in connection with, or based on allegations of, any of the following:

- (a) any third-party claim resulting from the acts or omissions of Vendor;
- (b) any breach of any representation, warranty or covenant, including any Losses arising from or in connection with any third-party claim to the extent such claim is based on allegations which, if true, would constitute a breach of any such representation, warranty or covenant;
- (c) any claims arising out of or related to Vendor's breach;
- (d) any claim asserted against Exelon alleging that Exelon is an employer, co-employer or joint employer of any Vendor personnel; and

- (e) any claims arising out of or related to Vendor's improper termination of this Agreement or Vendor's abandonment of its work hereunder.

14.2 Cross-Indemnity.

Each Party shall indemnify, defend and hold harmless the other Party, its Affiliates and their respective officers, directors, employees, agents and representatives, from any and all Losses arising from, in connection with, or based on allegations of any of the following:

- (a) the death or bodily injury of any agent, employee, customer, business invitee or business visitor or other person caused by the tortious conduct of the indemnifying Party;
- (b) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of the indemnifying Party; and
- (c) third-party claims arising from the indemnifying Party's breach or alleged breach of its confidentiality obligations under Section 11.1.

14.3 Infringement.

If the System or any component thereof becomes, or in Vendor's reasonable opinion is likely to become, the subject of any infringement or misappropriation claim or proceeding, Vendor shall, at its sole cost and expense, in the following order of priority, and in addition to indemnifying Exelon as provided in this Article 14 and to the other rights Exelon may have (a) obtain for Exelon the right and license to continue to use the System in the manner permitted under this Agreement; (b) modify the System in a manner that makes such System non-infringing while not degrading performance, functionality or quality in any material respect; or (c) replace the System of relevant component with a compatible, functionally equivalent, and non-infringing product in a manner that does not degrade performance, functionality or quality in any material respect. If none of these actions can be accomplished by Vendor, Vendor shall, in addition to indemnifying Exelon as provided in this Article 14 and to the other rights Exelon may have, refund to Exelon the amounts Exelon has paid to Vendor hereunder.

14.4 Indemnification Procedures.

With respect to third-party claims, the following procedures shall apply:

- (a) Promptly after receipt by any entity entitled to indemnification under Section 14.1, 14.2 or 14.3 of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to any such Section, the indemnitee shall notify the indemnitor of such claim in writing. No failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) business days following receipt of written notice from the indemnitee relating to any claim (but in no event later than five (5) business days prior to the due date of any answer or other papers required to be filed in response to a complaint, petition or other papers filed by the third-party that initiated the action proceeding), the indemnitor shall notify the indemnitee in writing if the indemnitor elects to assume control of the defense and settlement of that claim (a "Notice of Election").
- (b) If the indemnitor delivers a Notice of Election relating to any claim within the required notice period, the indemnitor shall be entitled to have sole control over the defense and

settlement of such claim; provided that (i) the indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the indemnitor has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph, the indemnitor shall not be liable to the indemnitee for any legal expenses incurred by the indemnitee in connection with the defense of that claim. In addition, the indemnitor shall not be required to indemnify the indemnitee for any amount paid or payable by the indemnitee in the settlement of any claim for which the indemnitor has delivered a timely Notice of Election if such amount was agreed to without the written consent of the indemnitor.

- (c) If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the indemnitor. The indemnitor shall promptly reimburse the indemnitee for all such costs and expenses.

15. LIMITATION OF LIABILITY

15.1 Limitation of liability.

- (a) EXCEPT AS PROVIDED IN SECTION 15.1(c), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, BREACH OF WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) Except as provided in Section 15.1(c), each Party's total liability to the other Party in connection with this Agreement, whether in contract or in tort, shall be limited to the greater of (i) the total charges paid or payable to Vendor under this Agreement or (ii) [____] dollars (\$[____]).
- (c) The limitations set forth in Sections 15.1(a) and 15.1(b) shall not apply with respect to: (i) claims that are the subject of indemnification pursuant to Article 14, (ii) damages occasioned by the gross negligence or willful misconduct of a Party, (iii) damages occasioned by a Party's breach of Section 11.1, or (iv) damages occasioned by a Party's violation of the Intellectual Property Rights of the other Party.

16. TERMINATION

16.1 Termination for Cause.

- (a) Exelon may terminate this Agreement if Vendor:
 - (i) breaches any of its material obligations under this Agreement, and fails to cure such material breach within thirty (30) days following written notice from Exelon;
 - (ii) repeatedly breaches any of its obligations under this Agreement which breaches, in the aggregate, are materially adverse to Exelon; or

- (iii) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, files, or has filed against it, an action under any state insolvency or similar law for the purpose of seeking its bankruptcy, reorganization, or liquidation, which action is not discharged within ninety (90) days of such filing; enters an order for relief under the Bankruptcy Code, or has its business affairs wound up or liquidated, voluntarily or involuntarily.

Except as otherwise set forth in this Agreement, Exelon may exercise its right to terminate under this Section 16.1 by specifying in a written notice to Vendor the nature and extent of Vendor's breach(es) and by specifying a date not less than fifteen (15) days following the date of receipt of the notice to be the termination date.

- (b) Vendor may terminate this Agreement only if Exelon (i) fails to pay Vendor any fee due and owing under this Agreement which Exelon is not otherwise permitted to withhold from payment pursuant to the terms of this Agreement, and (ii) fails to cure such breach within one hundred twenty (120) days following written notice from Vendor. Vendor may pursue all other legal remedies it may have, including monetary damages, in connection with this and all other breaches by Exelon of Exelon's obligations under this Agreement. Vendor may exercise its right to terminate under this Section 16.1(b) by specifying in a written notice to Exelon of its failure to pay and by specifying a date not less than fifteen (15) days following the date of receipt of the notice to be the termination date.

16.2 Termination for Acceptance Test Failure.

Exelon may terminate this Agreement as provided in Section 9.2.

16.3 Consequences of Termination.

Termination of this Agreement shall not affect any rights that any Party may have (whether at law or in equity), with respect to any breach of this Agreement occurring prior to or following such termination. Upon termination of this Agreement, Vendor shall promptly return to Exelon the property of Exelon which is in Vendor's possession or under its control.

17. GENERAL

17.1 Governing Law.

The Agreement and performance under it will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania notwithstanding any Pennsylvania choice of law rules that would apply the substantive law of any other jurisdiction.

17.2 Jurisdiction.

The Parties consent to venue, and to the non-exclusive jurisdiction of (a) the United States District Court for the Eastern District of Pennsylvania, or (b) if such court does not have jurisdiction, to the courts of the Commonwealth of Pennsylvania located in Philadelphia, for all litigation which may be brought with respect to the terms of, and the transactions and relationships contemplated by, this Agreement. The Parties further consent to the jurisdiction of any state court located within a district that encompasses assets of a Party against which a judgment has been rendered for the enforcement of such judgment or award against the assets of such Party. The Parties hereby irrevocably waive, to the fullest extent

permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

17.3 Compliance with Laws and Regulations.

Each Party shall perform its obligations in a manner that complies with the applicable federal, state and local laws, regulations, ordinances and codes (including identifying and procuring required permits, certificates, approvals and inspections and complying with applicable tax regulations). If a charge occurs of non-compliance of a Party with any such laws, regulations, ordinances or codes, the Party so charged shall promptly notify the other Party of such charges in writing.

17.4 Nondiscrimination and Affirmative Action.

Vendor shall, unless exempt, comply with the federal regulations pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including, but not limited to, the following, all of which are incorporated herein by reference: (i) Affirmative Action Compliance Program (41 CFR 60-1.40); (ii) Affirmative Action - Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action - Handicapped Workers (41 CFR 60-741.4); (iv) Equal Opportunity (41 CFR 60-1.4); (v) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vi) Fair Labor Standards Act of 1938, as amended; (vii) Prohibition of Segregated Facilities (41 CFR 60-1.8); (viii) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7) and (ix) union-related posting and contract clause requirements under Executive Order 13201 (29 CFR, part 470). Vendor shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.

17.5 Diversity Supplier Spend.

Exelon is actively committed to supporting Diversity Suppliers as defined in Exelon Procedure No. SM-AC-4001. In support of Exelon's commitment, Vendor will make certain required expenditures with Diversity Suppliers as set forth in a Purchase Order or other writing from Exelon to Vendor. Vendor shall report its expenditures with Diversity Suppliers on a monthly basis, or on a negotiated periodicity, depending on the term of the Agreement or Purchase Order. Vendor shall provide this reporting information by completing the "2nd Tier Diversity Reporting Web form" located on Exelon's Supplier Diversity Website http://www.exeloncorp.com/supply/eed/tier2_report/tier2_report.shtml. Vendor can obtain a user-id and password for the 2nd Tier Diversity Reporting Website by contacting the Supplier Diversity Office at (215) 841-5746. All submitted Diversity Suppliers must be supported by evidence of certification and Exelon's 2nd Tier Direct/Indirect Profile Form for consideration as 2nd Tier Diversity participation. Exelon recognizes a number of organizational certifications, including without limitation the following:

- Chicago Minority Business Development Council (MBE)
- Woman's Business Development Center (WBE)
- Illinois Department of Transportation (MBE/WBE)
- City of Chicago (MBE/WBE)
- WMBE Clearinghouse (MBE/WBE)
- Minority Supplier Development Council of PA, NJ and DE
- Women's Business Enterprise Council of PA, NJ and DE
- Minority Business Enterprise Council - City of Philadelphia

Bureau of Contract Administration and Business Development - Commonwealth of Pennsylvania

Recognition for certifications held by any other Diversity Supplier accreditation organization must be submitted to Exelon's Diversity Manager for approval.

17.6 Continued Performance.

Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.

17.7 Relationship of the Parties.

Vendor is performing the Services as an independent contractor. Vendor has the sole right and obligation to supervise, manage, direct, and perform all work to be performed by its personnel and subcontractors under this Agreement. Persons who perform the Services are employees of Vendor (or its subcontractors) and Vendor will be solely responsible for (a) the acts and omissions of all such persons and entities, (b) payment of compensation to such persons and entities, and (c) any injury to such persons in the course of their employment. Vendor will assume full responsibility for payment of all federal, state and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons and entities. Should Exelon be required to pay any amount to a governmental agency for failure to withhold any amount as may be required by law, Vendor agrees to indemnify Exelon for any amount so paid, including interest, penalties and fines. Vendor is not an agent of Exelon and thus has no authority to represent Exelon as to any matters, except as may be expressly authorized in this Agreement.

17.8 No Waiver of Default.

No waiver will be effective unless in a writing signed by an authorized representative of the Party against which enforcement of the waiver is sought. Neither the failure of either Party to exercise any right of termination, nor the waiver of any default will constitute a waiver of the rights granted in this Agreement with respect to any subsequent or other default.

17.9 Remedies Cumulative.

All remedies specified in this Agreement will be cumulative and in addition to any other remedies available under this Agreement or at law or in equity.

17.10 Publicity.

Vendor may not announce or release any information regarding this Agreement or its relationship with Exelon without Exelon's express prior written approval (which may be withheld in Exelon's sole discretion). Vendor shall not use any trade name, trademark, service mark or any other information which identifies Exelon or any Exelon Affiliate in Vendor's sales, marketing and publicity activities, including postings to the Internet, interviews with representatives of any written publication, television station or network, or radio station or network without Exelon's express prior written approval.

17.11 Assignment.

Vendor will not assign, transfer or otherwise convey or delegate any of its rights or duties under this Agreement to any other Party without the prior written consent of Exelon, and any attempt to do so will

be void. This Agreement shall be binding upon the respective successors and permitted assigns of the Parties.

17.12 Notices.

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this Section 17.12), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Vendor:

[To be completed]

In the case of Exelon:

Exelon Business Services Company
227 West Monroe Street
Chicago, Illinois 60606
Attn: [_____]

With a copy to:

Exelon Business Services Company
10 South Dearborn Street
Chicago, Illinois 60603
Attn: General Counsel

Either Party may from time to time change the individual(s) to receive notices under this paragraph and its address for notification purposes by giving the other prior written notice of the new individual(s) and address and the date upon which the change will become effective.

17.13 Execution; Counterparts.

This Agreement shall not be binding or effective until properly executed by each of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully executed counterpart.

17.14 Severability.

If any provision of this Agreement is held invalid by a court with jurisdiction over the Parties to this Agreement, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

17.15 Third-Party Beneficiaries.

This Agreement is entered into solely between Exelon and Vendor and, except for the Parties' indemnification obligations under Article 14 and the rights of Exelon Affiliates to use and copy the

Software, will not be deemed to create any rights in any third-parties or to create any obligations of either Exelon or Vendor to any third-parties.

17.16 Survival.

Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement will survive any termination or expiration of this Agreement and continue in full force and effect, including Sections 3.2, 3.3, 8.4, 8.5, 11.1, 17.1, 17.2, 17.3 and 17.16 and Articles 12, 14 and 15.

17.17 Entire Agreement; Amendments.

This Agreement contains the entire agreement of the Parties and supersedes all prior agreements and representations, whether written or oral, with respect to the subject matter of this Agreement. Modification or amendment of this Agreement or any part of this Agreement may be made only by a written instrument executed by authorized representatives of both Parties. In the case of Exelon, only the individual holding the position of Category Manager or a more senior officer at Exelon shall be considered to be an authorized representative of Exelon, authorized to make modifications or amendments to this Agreement.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to sign this Agreement effective as of the Effective Date.

[insert the EXELON entity] acting

by and through its agent,

Exelon Business Services Company

[Insert Name of Vendor]

By: _____

By: _____

(Type or print name)

(Type or print name)

Title: _____

Title: _____

SCHEDULE A

System**1. Description of System:**

[Identify each individual component of the System, including equipment and software, by name and version.]

2. Specifications, Performance Standards, and Functional Requirements:

[Include here all of the specifications, performance standards, and functional requirements for the System that are important to Exelon. Be certain to include run and operator response times (if applicable) which are part of the Acceptance criteria discussed in Section 9.2.]

3. Documentation:

[Identify here all user manuals and other documentation concerning the Software.]

4. Modifications to Scope Of License:

[Identify here any modifications to the scope of the License defined in Section 3.1.]

SCHEDULE B

Fees

1. Fees:

For the Equipment:

For the Software:

For the Services:

[Identify here separately all of the fees Exelon is to pay to Vendor for the System and the Services.]

2. Payment Schedule:

[Identify here the schedule for payment of the fees.]

SCHEDULE C

System Installation

Vendor will install the Equipment and the Software accordance with this Schedule C.

1. Project Plan.

(a) Vendor shall install the System in compliance with the project plan (the "Project Plan") attached to this Schedule C. The Project Plan has been prepared by Vendor and approved by Exelon. The Project Plan includes (i) a concise statement of the scope of work and objectives; (ii) detailed descriptions of the tasks; (iii) the implementation plans and high level work plans that set forth for each task noted therein the planned start date, completion date, level of resources required from each Party, and the Deliverables (if any) to be delivered upon task completion; (iv) a designation of the responsibility for each task; (v) a schedule for such activity, including any key milestones; and (vi) a staffing plan for such activity.

(b) Vendor shall maintain the Project Plan in the current format and at least the current level of detail. The Project Plan may be revised upon the mutual agreement of the Parties.

2. Installation Site Preparation.

(a) Prior to the delivery of the Equipment, Vendor shall survey the Installation Site and shall specify all electrical and environmental changes required for proper installation, maintenance, and operation of the System. Vendor shall promptly provide Exelon with written notice of such requirements and shall cooperate with and, as requested, assist Exelon in devising a plan for making all of the recommended changes within the budget allotted by Exelon for Installation Site preparation. Vendor shall review all Installation Site preparation plans submitted by Exelon (the "Installation Site Preparation Plans") to ensure that the Installation-site's physical environment as proposed in the plans is compatible with the Equipment's installation, maintenance, and operation requirements. Vendor's review of the Installation Site Preparation Plans shall be conducted within the time specified in the Project Plan or, if no such time is specified, within a reasonable amount of time.

(b) If the Installation Site Preparation Plans incorporate all of the changes recommended by Vendor, and are not otherwise faulty or seriously flawed so as to pose an identifiable threat to the proper installation and operation of the Equipment and the System, Vendor shall approve such plans in writing. Vendor's approval shall constitute acceptance of the Installation Site Preparation Plans and thereafter Vendor shall not assert any claim as to its inability to perform as required by this Agreement due to the physical environment at the Installation Site. The Installation Site Preparation Plans shall become part of the Project Documents.

(c) Exelon shall be responsible for meeting the environmental requirements for the Equipment at the Installation Site in accordance with the Installation Site Preparation Plans and applicable timetable.

3. Delivery and Installation.

(a) Vendor shall arrange for delivery of the Equipment to the Installation Site in accordance with the Project Plan. Shipment of the Equipment shall be F.O.B. Exelon's receiving point at the Installation Site. In addition to paying all transportation charges for the Equipment, Vendor shall insure, and pay all

insurance charges for, the Equipment. Vendor shall have the responsibility of choosing a shipper which meets any local trade union requirements.

(b) Vendor shall be responsible for moving the Equipment from Exelon's receiving point to the Installation Site and shall bear the risk of loss or damage to the Equipment while in transit from Exelon's receiving point to the Installation Site. Exelon shall bear all risk of loss or damage to the Equipment after delivery thereof to the Installation Site, unless such loss or damage is due to negligence or willful acts of Vendor, its employees, agents or representatives, defects in the Equipment or any cause for which Vendor is responsible hereunder. After delivery to the Installation Site, Vendor shall install the Equipment as set forth in the Project Plan, install the Software on the Equipment and bring the System to fully operational status meeting the Acceptance Criteria.

(c) [Exelon has the right to delay the start of delivery as set forth in the Project Plan for any reason and for a period not to exceed **[specify time period]** by notifying Vendor in writing on or before **[specify time].**]

SCHEDULE D**Training**

1. Vendor will provide the training described in this **Schedule D** (the "Training") in accordance with the schedule set forth in this **Schedule D** (the "Training Plan"). Exelon may videotape the Training and use and copy such recording for its internal purposes. Exelon personnel attending the Training may retain all materials provided to them during the Training for use and copying by Exelon for Exelon's internal purposes. Vendor also shall provide the Training in connection with Enhancements licensed by Exelon.

2. Vendor represents, warrants and covenants that it has designed the Training so that, assuming the implementation of the Training Plan, Exelon personnel trained by Vendor will be both efficiently and effectively trained to use and support the System. Vendor also represents, warrants and covenants that the Training Plan provides a sufficient quantity of training for the adequate and efficient operation of the System.

3. Training:

[Describe here in detail the Training (i.e., number of instructors, number of hours of instruction, location of instruction, subjects to be covered, materials to be distributed, number of Exelon personnel to be trained, etc.).]

4. Training Plan:

[Describe here the schedule for the Training.]

SCHEDULE E**Maintenance**

1. Vendor shall maintain the Equipment and the Software in good working order during the Warranty Period so that the System shall, at all times during the Warranty Period, meet or exceed the specifications in the Project Documents and the performance requirements set forth in **Schedule A**. Vendor shall, at no cost to Exelon, promptly correct any and all errors, deficiencies and Defects in the System.
2. During the Warranty Period if the System or any component thereof is inoperable or suffers degraded performance for more than [_____] not due to causes external to the System, Vendor shall, at Exelon's request, promptly replace the System or specified component with new equipment and software of the same type, manufacturer and quality. Such replacement shall be accomplished through a "hot" swap without any loss of production time or adverse impact on Exelon's operations.
3. *[Describe here in detail Vendor's specific operational maintenance obligations (e.g., telephone support, problem resolution, on-site services).]*

EXHIBIT 1**Definitions**

When used in this Agreement, the terms set forth below shall have the meaning indicated:

1. **“Acceptance”** shall have the meaning set forth in Section 9.2.
2. **“Acceptance Criteria”** shall have the meaning set forth in Section 9.2.
3. **“Acceptance Date”** shall mean the date of delivery to Vendor of the Acceptance Notice.
4. **“Acceptance Notice”** shall have the meaning set forth in Section 9.3.
5. **“Acceptance Period”** shall have the meaning set forth in Section 9.3.
6. **“Acceptance Tests”** shall have the meaning set forth in Section 9.2.
7. **“Affected Obligations”** shall have the meaning set forth in Section 2.5.
8. **“Affiliate”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity
9. **“Agreement”** shall mean this System Purchase Agreement, all schedules and exhibits hereto, and the Project Documents.
10. **“ASP System”** means the Application Service Provider System which, among other things, stores Exelon Data as set forth in Section 1.1(f) of **Exhibit 2**.
11. **“Bankruptcy Code”** shall have the meaning set forth in Section 3.3.
12. **“Code”** shall mean computer programming code contained in the Software. If not otherwise specified, Code shall include both Object Code and Source Code. Code shall include Maintenance Modifications and Enhancements licensed by Exelon.
13. **“Confidential Information”** shall have the meaning set forth in Section 11.1.
14. **“Control”** and its derivatives mean with regard to any entity the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.
15. **“Defect”** shall have the meaning set forth in Section 9.2.
16. **“Delivery Site”** shall have the meaning set forth in Section 2.2.
17. **“Disaster Recovery Plan”** shall mean an agreed upon disaster recovery plan as set forth in Section 1.4 of **Exhibit 2**.

18. **“Documentation”** shall mean (a) the user manuals, operations manuals and other written materials (regardless of the medium in which they are stored or displayed) that relate to the Software, including (i) the materials identified on Schedule A as Documentation, (ii) the materials identified in any Project Documents as Documentation and (iii) the specifications, performance standards and other functional requirements set forth on Schedule A, and (b) any and all amendments, modifications and supplements to such user manuals, operations manuals and written materials.
19. **“Enhancements”** shall mean modifications, additions, or substitutions, other than Maintenance Modifications, made to the Code that accomplishes incidental, structural, or functional improvements. Enhancements also include all versions and releases of the Software subsequent to the Effective Date.
20. **“Effective Date”** shall have the meaning set forth in the Preamble to this Agreement.
21. **“Escrow Agreement”** shall have the meaning set forth in Section 10.1.
22. **“Exelon”** shall have the meaning set forth in the preamble to this Agreement.
23. **“Include”, “includes”, and “including”** when following a general statement or term, shall mean “include without limitation”, “includes without limitation”, and “including without limitation”.
24. **“Installation Services”** shall mean the System installation services to be provided under this Agreement.
25. **“Installation Site”** shall mean the site(s) where the System is to be installed.
26. **“Installation Site Preparation Plans”** shall have the meaning set forth in Schedule C.
27. **“Intellectual Property Rights”** shall mean, on a worldwide basis, any and all: (a) rights associated with works of authorship, including copyrights, moral rights and mask-works; (b) Marks; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
28. **“License”** shall have the meaning set forth in Section 3.1.
29. **“Losses”** shall mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
30. **“Maintenance Modifications”** shall mean modifications, updates, or revisions made by Vendor to the Code that correct errors, support new releases of operating systems, or support new models of input-output devices with which the Code is designed to operate.
31. **“Maintenance Services”** shall mean the maintenance services to be provided under this Agreement
32. **“Marks”** means all trademarks, service marks, trade names, trade dress, symbols, logos, designs, and other source identifiers.
33. **“Notice of Election”** shall have the meaning set forth in Section 14.4.

34. **“Object Code”** shall mean Code in machine-readable form generated by compilation of the Source Code and contained in a medium that permits it to be loaded into and operated on the Equipment.
35. **“Operational Deliverable”** shall have the meaning set forth in Section 9.1.
36. **“OSHA”** shall have the meaning set forth in Section 1.2 of Exhibit 2.
37. **“Party”** or **“Parties”** shall have the meanings set forth in the preamble to this Agreement.
38. **“Project”** shall mean the set of activities conducted pursuant to this Agreement and the Project Documents.
39. **“Project Documents”** shall mean the Project Plan, the System specifications, the Installation Site Preparation Plans and such other documents as are agreed by the Parties to be Project Documents.
40. **“Project Plan”** shall have the meaning set forth in Schedule C.
41. **“Ready for Acceptance”** shall have the meaning set forth in Section 9.1.
42. **“Services”** shall mean the Implementation Services, Training Services and Maintenance Services to be provided under this Agreement.
43. **“Software”** shall mean (a) the software product(s) described in Schedule A; (b) all Maintenance Modifications and Enhancements that are provided to Exelon under a separate maintenance agreement between the Parties; (c) the Code contained in or otherwise related to each of the foregoing; and (d) the Documentation.
44. **“Source Code”** shall mean Code in programming languages, including all comments and procedural code, and all related development documents (e.g., flow charts, schematics, statements of principles of operations, end-user manuals, architecture standards, and any other specifications that are used to create or that comprise the Code).
45. **“System”** shall have the meaning set forth in the preamble to this Agreement.
46. **“Term”** shall have the meaning set forth in Section 7.1.
47. **“Third-Party Lessor”** shall have the meaning set forth in Section 2.4.
48. **“Training”** shall have the meaning set forth in Schedule D.
49. **“Training Plan”** shall have the meaning set forth in Schedule D.
50. **“Training Services”** shall mean the Training services to be provided under this Agreement.
51. **“Vendor”** shall have the meaning set forth in the preamble to this Agreement
52. **“Warranty Period”** shall have the meaning set forth in Section 12.1.

EXHIBIT 2

Certain Vendor Services-Related Responsibilities1.1 Exelon Standards.

(a) General. Vendor shall ensure that Vendor personnel and its subcontractors will abide by all reasonable directives issued by Exelon, including those set forth in Exelon's then-current standards, policies and procedures (to the extent applicable), all on-site rules of behavior, work schedules, security procedures and other standards, policies and procedures as established by Exelon from time to time.

(b) Exelon Fitness and Security Standards. Vendor shall permit only those Vendor personnel and contractors who meet Exelon's standards for fitness and security as these are made available to Vendor (including those set forth in the then-current fitness for duty and access authorization program for contractors as made available to Vendor) to perform Services. Vendor shall require Vendor personnel and contractors to participate in training courses applicable to Exelon's personnel and contractors, in accordance with Exelon's policies uniformly applied.

(c) Background Examinations. Vendor will be required to conduct background investigations in accordance with Exelon's security procedures for all of its personnel who will have access to any Exelon buildings, properties and/or any Exelon assets. Such investigations must be completed prior to the first day upon which Vendor and its personnel are to provide the applicable services. This background investigation will be a minimum requirement. Some Exelon business units or departments may have more stringent background investigation requirements, which must be followed in addition to these minimum requirements. The purpose of the background investigation is to ensure application of an appropriate level of security to third-party Vendor personnel who may affect the reliability, safety and integrity of Exelon's business and assets. At a minimum, the background investigation must include the following: names, dates of birth, home addresses, criminal history check, social security number verification or, if the subject is a foreign citizen, verification of an authorized work permit, and driver's license check (only required if a driver's license is needed in order to perform the services to be provided). Additionally, any personnel who will have access to Exelon financial data and/or monetary assets must also be subject to a credit check and review of Federal District Court records for any prior bankruptcy filings.

Further business unit or department background investigations and examinations of Vendor personnel may include, unless prohibited by applicable law: (i) license or professional certification verifications; (ii) physical and psychological examinations, including random drug testing; (iii) education verifications; and (iv) any other background investigations and examinations required by law or regulation or Exelon's company policies that apply to its own personnel and other contractors.

Exelon may require Vendor to provide evidence of consent by its personnel, in a form provided by Exelon, to the performance of background investigations and examinations as provided above. If an individual refuses to consent to performance of a background investigation or examination described herein, Vendor shall not be in breach of this Agreement as a result of such individual's refusal to consent to such background investigation or examination, provided that Vendor (A) immediately removes and replaces such Vendor personnel with someone who has met the minimum requirements set forth above, and (B) continues to perform the Services without degradation and in accordance with this Agreement.

Vendor will be responsible for conducting the background investigation at its own expense and shall not be entitled to recover costs for conducting such unless both parties agree, in writing, in advance of the background investigation.

Upon completion of the background investigation, Vendor will submit a background investigation certification, which consists of the certification form or a written certification (letter or affidavit) as required by applicable Exelon Procedures, to the appropriate Exelon point of contact.

(d) **Removal.** In addition to the foregoing, if Vendor becomes aware that any individual performing Services hereunder is charged with or convicted of a felony or a misdemeanor, Vendor shall remove such individual from performing Services hereunder unless and until (i) the charge is resolved without a conviction or (ii) Vendor informs Exelon of the circumstances and Exelon approves such individual continuing to perform Services hereunder.

(e) **Quality Audit.** Vendor's Services shall be subject to audit by Exelon or any of its authorized representatives acting on Exelon's behalf. Vendor shall comply with all reasonable requests by Exelon to make available books and records necessary for such audit. Vendor shall also include all subcontracts issued in conjunction with this Agreement the right of Vendor and/or Exelon to audit the records of the subcontractor.

(f) **Access to ASP System.** Vendor shall maintain and provide access, both electronic and physical, upon request to copies of Exelon data, content, and other property on the ASP System as Exelon requires for update, modification, downloading, or other purposes. Such access shall include escorted access to the physical location where the ASP System is maintained.

1.2 **Compliance with Laws.** In its performance of the Services, Vendor shall fully comply with all federal, state and local laws applicable to Vendor, including those laws regarding non-discrimination in employment, occupational health and safety, environmental protection, fair labor standards, employment of aliens, export controls and privacy. Vendor will be responsible for all worker eligibility (I-9) verification procedures for Vendor personnel and contractors, in accordance with applicable law, and shall ensure that each individual assigned to Exelon's account is authorized to work in the United States and legally perform its particular work function. Vendor shall promptly notify Exelon in the event that it becomes aware of any actual or suspected violation (or charge or investigation) of any such laws that may materially or adversely impact the Services and will fully cooperate with Exelon and all governmental authorities in connection therewith. Without limiting the generality of the foregoing:

(a) With respect to Vendor personnel and contractors, Vendor shall, to the extent applicable, comply with the federal laws, rules and regulations pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including the following, all of which are incorporated herein by reference: (i) Affirmative Action Compliance Program (41 CFR 60-1.40); (ii) Affirmative Action – Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action – Handicapped Workers (41 CFR 60-741.4); (iv) Equal Opportunity (41 CFR 60-1.4); (v) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vi) Fair Labor Standards Act of 1938, as amended; (vii) Prohibition of Segregated Facilities (41 CFR 60-1.8); and (viii) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7). Vendor shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.

(b) In order to protect persons and property from damage, injury, or loss, Vendor shall comply with, and cause its subcontractors to comply with, all applicable domestic and foreign occupational health and safety laws and regulations, including those contained in or issued pursuant to the Occupational Safety

and Health Act of 1970 (“OSHA”), as amended, or Exelon’s safety requirements (to the extent the same is provided to Vendor in advance), whichever is more stringent, in connection with the provision of Services at Exelon facilities. Vendor shall review and monitor the safety programs of its subcontractors to confirm that such safety programs are consistent with Vendor’s overall safety program for the provision of Services at Exelon facilities. Exelon shall not be in charge of, or in any way responsible for, the safe performance of the Services. Vendor shall promptly notify Exelon, in writing, of any material changes in Vendor’s safety program or if Vendor discovers any conflicts between Exelon’s and OSHA’s safety requirements. Vendor’s duties and responsibilities for ensuring safety and protection in connection with the Services shall continue until such time as all the Services are completed. Unless otherwise required by Exelon, Vendor shall not create a safety manual for any Services.

1.3 **Use of Subcontractors.**

(a) Vendor shall not delegate or subcontract any of its obligations under this Agreement without Exelon’s prior written approval. Exelon shall have the right to approve or disapprove the use of proposed subcontractors not identified in this Agreement or a Task Order in its sole discretion.

(b) Vendor shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Vendor’s employees and for purposes of this Agreement such work shall be deemed work performed by Vendor. Vendor shall be Exelon’s sole point of contact regarding the Services, including with respect to payment.

(c) Exelon shall have the right to direct Vendor to replace any subcontractor if the subcontractor’s performance is materially deficient, good faith doubts exist concerning the subcontractor’s ability to render future performance because of changes in the subcontractor’s ownership, management, financial condition, or otherwise, or there have been material misrepresentations by or concerning the subcontractor.

(d) In furtherance, and not in limitation of [Article 11](#), Vendor shall not disclose Exelon Confidential Information to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of Vendor under this Agreement.

1.4 **Back-up and Disaster Recovery.**

Vendor shall provide backup, disaster recovery and storage capabilities so as to maximize availability of the Services during an event that would otherwise affect the delivery of the Services. At a minimum, such capabilities will provide for restoration of Services within the timeframes set forth in the Disaster Recovery Plan. As a part of its recovery requirements, Exelon and Vendor will meet to determine and define the “Recovery Time Objective”, i.e., how long the system can be unavailable, and the “Recovery Point Objective”, i.e., how much data is lost. Vendor’s responsibilities shall include the following:

(a) Back-up and store Exelon Data (on tapes or other storage media as appropriate) on-site for efficient data recovery and off-site to provide protection against disasters and to meet file recovery needs.

(b) Conduct incremental and full backups (in accordance with mutually agreed upon timeframes) to capture data, and changes to data, on the ASP System.

- (c) Develop and maintain a Disaster Recovery Plan approved by Exelon. In the event of a disaster, Vendor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan.
- (d) Maintain the ability to provide full “hot-site” recovery for the ASP System in accordance with the Disaster Recovery Plan. A hot-site is a fully-equipped computer center which provides one (1) or more computer models, network connections, and the necessary peripheral equipment to replicate the data processing from the primary computer site, including uninterruptible power supplies, printers, consoles, tape drives, redundant environmental conditioning, fire protection and warning devices, intrusion-detection devices, physical security, and adequate office space for personnel to conduct normal data center operations.
- (e) Provide “cold-site” facility in case of extended outage, including some or all of the development environment.
- (f) Plan and conduct disaster recovery tests quarterly each year of the term in coordination with Exelon. Vendor shall document results and provide analysis and recommendations for improvements in recovery capabilities.
- (g) Generate a report following each and any disaster measuring performance against the Disaster Recovery Plan and identification of problem areas and plans for resolution.

EXHIBIT 3

Required Vendor Insurance Coverages1.1 Insurance Coverage.

During the Term (and, to the extent that any insurance is carried on a claims made basis, for such period thereafter that claims may be legally made with respect to occurrences during the Term) and in any event prior to commencement of work under this Agreement, Vendor shall have and maintain in force at least the following insurance coverage and provide to Exelon from companies acceptable to Exelon certificates of insurance evidencing:

- (a) **Employer's Liability Insurance and Worker's Compensation Insurance**, including coverage for occupational injury, illness and disease, and other similar social insurance in accordance with the laws of the country, state, province or territory exercising jurisdiction over the employee with minimum limits per employee and per event of one million dollars (\$1,000,000.00) and a minimum aggregate limit of one million dollars (\$1,000,000.00) or the minimum limits required by law, whichever limits are greater.
- (b) **Comprehensive General Liability Insurance** (with coverages consistent with ISO CG 0001(10/98)), including blanket Products, Completed Operations, Premises Operations, Bodily Injury, Personal and Advertising Injury, Contractual and Broad Form Property Damage liability coverages, on an occurrence basis, with a minimum combined single limit one million dollars (\$1,000,000.00) per occurrence and per project or per location aggregate. This coverage shall be endorsed to name Exelon, its officers, directors, employees, agents, representatives, Affiliates, subsidiaries, successors, and assigns as additional insureds using ISO CG 2026 (11/85).
- (c) **Automotive Liability Insurance** covering use of all owned, non-owned and hired automobiles for bodily injury, property damage, uninsured motorist and underinsured motorist liability with a minimum combined single limit per accident of one million dollars (\$1,000,000.00) or the minimum limit required by law, whichever limit is greater. This coverage shall be endorsed to name Exelon as an additional insured.
- (d) **Professional Liability/Errors and Omissions Insurance** covering liability due to errors or omissions in the performance of Services under this Agreement, with limits of not less than one million dollars (\$1,000,000.00) per claim and one million dollars (\$1,000,000.00) aggregate.
- (e) **Commercial Crime Insurance**, including blanket coverage for Employee Dishonesty and Computer Fraud for loss or damage arising out of or in connection with any fraudulent or dishonest acts committed by the employees of Vendor, acting alone or in collusion with others, with a minimum limit per event of one million dollars (\$1,000,000.00).
- (f) **Excess or Umbrella Liability Insurance** with a combined single limit of not less than four million dollars (\$4,000,000.00) and per project or per location aggregate. These limits apply in excess of each of the policies described in Sections 1.1(a), 1.1(b) and 1.1(c) above.

1.2 Insurance Conditions.

- (a) The insurance in Sections 1.1(a), through 1.1(e) above shall be primary and non-contributing with respect to any insurance or self-insurance that may be maintained by either Party and shall waive all

rights of subrogation against Exelon and its Affiliates. Completed Operations coverage, where applicable, will be maintained for not less than three (3) years after the end of operations under this Agreement. The limits required above may be shown as a combination of primary and excess umbrella limits. All coverage required by Section 1.1(b) shall contain standard cross liability provisions.

(b) Certificates of insurance shall provide that no less than thirty (30) days' written notice shall be given to Exelon prior to any modification, cancellation, change or non-renewal of the policies or any reduction in coverage below the limits specified in Sections 1.1(a), through 1.1(e) above. Prior to the commencement of any Services and at Exelon's request at any time thereafter, Vendor shall promptly provide certificates of insurance evidencing that Vendor is maintaining the required coverage set forth above. Prior to the commencement of any Services and at Exelon's request at any time thereafter, Vendor shall promptly provide certificates of insurance evidencing that Vendor is maintaining the required coverage set forth above. The insurers selected by Vendor shall be reasonably acceptable to Exelon and each have a rating in the Best's Key Rating Insurance Guide (latest edition in effect on the latest date stated in the certificates of insurance referred to in the immediately preceding sentence) of A-/VII or better, or be otherwise acceptable to Exelon. Vendor shall require that its subcontractors, if any, maintain and, upon request, provide evidence of, insurance coverages as specified in this **Exhibit 3** naming Vendor and Exelon Corporation, its Affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns, as an additional insured or loss payee where relevant.

(c) In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage specified in this **Exhibit 3**, Vendor shall be solely responsible to take such action. Exelon shall notify Vendor, as soon as practicable, of any loss or damage or other event requiring notice or other action of which Exelon becomes aware, provided that the failure of Exelon to do so will not relieve Vendor of its obligations under this Section 1.1(c). Vendor shall provide Exelon with contemporaneous notice and with such other information as Exelon may request regarding the event.

(d) Failure of Vendor to provide insurance as herein required or failure of Exelon to require evidence of insurance or to notify Vendor of any breach by Vendor of the requirements of this **Exhibit 3** shall not be deemed to be a waiver by Exelon of any of the terms of this Agreement, including the obligation of Vendor to defend, indemnify, and hold harmless Exelon as required herein. Commencement of Services without the required certificates of insurance shall not constitute a waiver by Exelon of any rights under this Agreement or any remedy, at law or in equity. The obligation to procure and maintain any insurance required herein is a separate responsibility of Vendor and independent of the duty to furnish a copy or certificate of such insurance policies.

(e) In the event of any failure by Vendor to comply with the insurance requirements in this **Exhibit 3**, Exelon may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five (5) days' written notice to Vendor, purchase such insurance, at Vendor's expense, provided that Exelon shall have no obligation to do so and if Exelon shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by Exelon shall be promptly reimbursed by Vendor and/or may be withheld from any payment due Vendor.

(f) None of the requirements contained herein as to types, limits or Exelon's approval of insurance coverage to be maintained by Vendor are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Vendor under this Agreement, any other agreement with Exelon, or otherwise provided by law.