MASTER TERMS AND CONDITIONS
FOR INFORMATION TECHNOLOGY SERVICES
Between

Exelon Business Services Company, LLC
[for itself and its Affiliates]

and

____________________ (“Contractor”)

Dated as of __________, 20__
These Master Terms and Conditions for Information Technology Services establish the standard contractual terms and conditions under which Exelon Business Services Company, LLC and its Affiliates may, from time to time, purchase IT Services from Contractor.

I. DEFINITIONS

As used in these Terms and Conditions, the following terms shall have the following meanings:

“Acceptance Test” has the meaning given to it in Section 8.2(b)(i).

“Affiliate” means, with respect to Exelon, those entities identified in Exhibit E, as amended from time to time by Exelon, and also includes those entities that now or hereafter own, are owned by or under common control with Exelon, where “control” means at least a fifty percent (50%) ownership interest.

“ASP System” means the Application Service Provider System which, among other things, stores Exelon Data as set forth in Section 10.4(c).

“Change Order” means a written order issued by Exelon that permits and directs an addition to, deletion from, or adjustment or revision to a Task Order, and includes fully executed Extra, Deletion and Delay (“EDD”) Forms.

“Conflict of Interest” means any circumstance in which Contractor’s interests or the interests of another Person with whom Contractor has a relationship are materially adverse to the interests of Exelon or its Affiliates.

“Contract Documents” means the Task Order, any Change Orders thereto, these Terms and Conditions, and any other documents identified as Contract Documents in such Task Order or Change Orders.

“Contractor” means the party identified as such in these Terms and Conditions which is contractually responsible to perform the Services pursuant to Task Orders incorporating these Terms and Conditions.

“Contractor’s Designated Representative” shall mean the individual or individuals designated by the Contractor who will provide the general administration of these Terms and Conditions and shall be Contractor’s field representative in all matters relating to a particular Task Order.

“Contractor Personnel” means any and all individuals assigned by, through or on behalf of Contractor or its Subcontractors to perform the Work; including their partners, employees, officers, and agents. Contractor Personnel may also be referred to in Exelon’s Use of Contractor Policy as a “Third Party Contractor.”

“Critical Cyber Assets” as defined by the North American Reliability Council (NERC), includes, computers, including installed software and electronic data, and communication networks that support, operate, or otherwise interact with the bulk electric system operations. This does not include process control systems, distributed control systems, or electronic relays installed in generating stations, switching stations and substations.

“FERC” means the U.S. Federal Energy Regulatory Commission.

“Day(s)” shall mean any calendar day which is not a Saturday, Sunday or legal holiday in the state where the Work is performed.

“Defect” has the meaning given to it in Section 8.2(b)(iv).

“Deliverable” means the specific deliverables to be provided by Contractor in performing the Services.
“Disaster Recovery Plan” shall mean an agreed upon disaster recovery plan as set forth in Section 6.6.

“Effective Date” shall mean, notwithstanding anything herein to the contrary, the date set forth on the cover page hereto, or, if there is no such date, then the date Contractor first accepts a Task Order incorporating these Terms and Conditions.

“Estimate” means any Project Estimate, Assessment Phase Estimate or Non-binding Estimate of either the cost or duration (or both) of the activities described in that document. Estimates may be binding or non-binding as more fully described herein.

“Exelon” means Exelon Business Services Company, LLC and its Affiliates.

“Exelon Data” shall mean any Exelon Information provided by Exelon.

“Exelon’s Designated Representative” shall mean the individual or individuals designated by the Exelon who will provide the general administration of these Terms and Conditions and shall be Exelon’s field representative in all matters related to the Task Order. Exelon may, in its sole discretion, change its representative at any time or from time to time, and shall promptly notify Contractor, in writing, of any such change.

“Exelon Information” means all information or material, in any form, furnished or made available directly or indirectly to Contractor by Exelon or otherwise obtained by Contractor from Exelon.

“Independent Contractor” shall mean any individual retained by an entity on a contract basis.

“Investigation” has the meaning given to it in Section 6.3.

“IP Rights” means all right, title and interest in and to any and all inventions, patents, copyrights, trade secrets, trade names, know-how, intellectual property, software, shop rights, moral rights, licenses, developments, research data, designs, processes, formulas and other intangible proprietary or property rights, whether or not patentable (or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage), and any and all applications for, and extensions, divisions and reissuances of, any of the foregoing, and rights therein, and whether arising by statute or common law.

“IT Services” or “Services” means information technology services including software development, applications development; systems design, analysis and architecture; network design, architecture and security; database design and implementation; platform updates; system implementation and integration, and other related IT services. All IT Services shall be specifically described in one or more Task Orders (each in the form substantially similar to the one attached hereto and incorporated herein as Exhibit A) issued subject to the terms of these Terms and Conditions.

“Law” or “Laws” shall mean all laws, statutes, codes, ordinances, rules, regulations, lawful orders, applicable guidance documents from regulatory agencies, judicial decrees and interpretations, standards, permits and licenses, including health, safety, building, labor and employment laws, as amended from time to time, that are applicable to the Work and any of Contractor’s obligations under the Contract Documents.

“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).

“Marks” means all trademarks, service marks, trade names, trade dress, symbols, logos, designs, and other source identifiers.
“Material” means all systems, software, technology, documentation, reports, notes, tools, methods, methodologies, processes, procedures, workflows, inventions, forms, data, data formats, data compilations, program names, designs, drawings, videos and other material created, furnished or made available in connection with these Terms and Conditions.

“Milestones” means significant tasks to be performed or achieved by Contractor in performing Project Work as specified in Task Orders.

“NERC” means North American Electric Reliability Corporation or an entity with authority delegated by NERC, including without limitation the Reliability First Corporation, Northeast Power Coordinating Council, Florida Reliability Coordinating Council, Midwest Reliability Organization, SERC Reliability Corporation, Southwest Power Pool, RE, Texas Regional Entity, and the Western Electricity Coordinating Council.

“Operational Deliverable” has the meaning given to it in Section 8.1.

“Party” or “Parties” means Contractor or Exelon, individually or Contractor and Exelon, collectively.

“Person” means any natural person, partnership (limited, general, or other), joint venture (limited or otherwise), company (limited liability or otherwise), corporation, association, Governmental Authority, or any other legal entity of whatever kind or nature, together with any combination of one or more of the foregoing.

“Person Day” means an eight (8) hour workday as described in Section 9.1(d).

"Personally Identifiable Information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any (1) name, address, email address, passwords, account numbers, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number; (2) personal financial or healthcare information, credit card information, bank account number, credit card number or debit card number; (3) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; (4) unique electronic identification number, address, or routing code; (5) telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)); or (6) personal preferences, demographic data, marketing data, or any other identification data. For the avoidance of doubt, Personally Identifiable Information includes all “nonpublic personal information,” as defined under the Gramm-Leach-Bliley Act (15 United States Code (“U.S.C.”) §6801 et seq.) and “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d), and “Personal Data” as that term is defined in EU Data Protection Directive (Directive 95/46/EEC) on the protection of individuals with regard to processing of personal data and the free movement of such data.

“Personnel Rates” shall mean the daily rates to be charged for Contractor Personnel as set forth in Exhibit C.

“Project” means a discrete project as defined in any Task Order for which Contractor has accountability for specific Deliverables.

“Project Work” or “Work” means all Material, Deliverables and Services required to be provided by Contractor under the Task Order and its associated Contract Documents.

“Proprietary Information” has the meaning given to it in Section 10.3.

“Ready for Acceptance” has the meaning given to it in Section 8.1.

“Retiree” means a former Exelon or Affiliate employee whose employment was not governed by a collective bargaining agreement with IBEW Union Local 15 at the time of such person’s termination.
of employment and who previously received, is eligible to receive or is currently receiving benefit payments under an Exelon or Affiliate tax-qualified retirement plan, including the Exelon Corporation Retirement Program (Service Annuity Plan of PECO Energy Company or Commonwealth Edison Company Service Annuity System), the Exelon Cash Balance Pension Plan, the Exelon Employee Pension Plan for Clinton, TMI and Oyster Creek, the Pension Plan of Constellation Energy Group, Inc., and Pension Plan of Constellation Energy Nuclear Group, LLC and Nine Mile Point Pension Plan of Nine Mile Point Nuclear Station.

“Site” means Exelon’s facilities or such other premises (including premises owned or controlled by a third-party) where the Work is to be performed and for which the Work is intended.

“Special Terms and Conditions” means terms and conditions not contained in these Terms and Conditions but made a part of a Task Order by attachment to or reference therein.

“Specifications” shall mean the final characteristics, dimensions, tolerances, performance requirements, and other particulars for the Work provided or approved by Exelon and set forth in the Task Order and other Contract Documents.

“Staff Augmentation” means Work performed by Contractor Personnel that is either: (1) designated by Exelon as “Staff Augmentation” in the Task Order (2) not designated by Exelon as “Project”, “Outsourced” or “Outage” Work in the Task Order, or (3) directly supervised or managed on a day-to-day basis by Exelon.

“Subcontractor” means any Person contracting directly with Contractor to furnish any part of the Work, or a Person contracting with a Subcontractor of Contractor (regardless of tier) to furnish any part of the Work.

“Task Order” shall have the meaning set forth in Section 2.1.

“Terms and Conditions” means these Master Terms and Conditions for the Purchase of Information Technology Services between Contractor and Exelon together with all appendices, exhibits, schedules, and attachments hereto, all as such may be amended, restated, or supplemented from time to time as stated herein.

“Third-Party Licensor” means any third-party that licenses or otherwise conveys the right to use and/or distribute any materials owned or otherwise made available by such third-party to Exelon.

All other capitalized terms used herein but not set forth above as defined terms shall have the meanings ascribed to them in these Terms and Conditions.

2. SERVICES

2.1. The IT Services to be provided by Contractor under these Terms and Conditions shall consist of Project Work for which Contractor shall have accountability for specific Deliverables as specified in Task Orders [both were already defined] to be entered into by the Parties substantially in the form attached hereto as Exhibit A. These Terms and Conditions shall be implemented through one (1) or more separate Task Orders entered into from time to time by Exelon and Contractor. These Terms and Conditions provide basic terms and conditions applicable to all such Task Orders.

2.2. Contractor is a non-exclusive provider of services. Contractor acknowledges and agrees that services may be performed by Exelon, Contractor and other service providers selected by Exelon, and that the Task Orders performed by Contractor may account for only a portion of such services. Notwithstanding the fact that Exelon or other service providers may perform services relating to the IT Services, Contractor will remain accountable for the quality, performance and timely completion of the IT Services performed by Contractor and its subcontractors.
2.3. Absent the execution of a Task Order, these Terms and Conditions do not, in and of themselves, represent a commitment by Exelon to receive any Services from Contractor or pay Contractor any fees.

2.4. Any Task Orders executed under these Terms and Conditions will be a part of these Terms and Conditions as if fully included within its body. In the event of any inconsistency between the Terms and Conditions and a Task Order, the Terms and Conditions will take precedence, except as to provisions specifically identified in a particular Task Order as modifying or amending the Terms and Conditions, which will control for purposes of that Task Order only.

3. PROJECT WORK.

3.1. The process outlined below will be used to establish the cost, time frames and performance requirements for Project Work:

(a) **Project Initiation and Estimates.** Exelon will initiate a request for Project Work by submitting to Contractor a high level description of the requirements for the Project. Contractor will promptly review the requirements and, with any additional input reasonably required from Exelon, prepare a firm estimate of Contractor’s charges and time to complete the Project (a “Project Estimate”). Each Project Estimate will consist of:

(i) Contractor’s total labor charges to complete the Project Work (including correction of any deficiencies or Defects identified during acceptance and performance testing), with a breakdown of the estimated number of Person Days by job category and by function (e.g., design, coding, testing, implementation, training and documentation);

(ii) incidental expenses to the extent reimbursable under Section 9.2; and

(iii) the time period required to complete the Project Work, listed by Milestones as appropriate.

(b) **Assessment Phase.** It is recognized that for certain large, complex Projects, Contractor may need to perform some initial assessment work to be able to provide a firm estimate for the entire Project (such phase of the Project being referred to as the “Assessment Phase”). For these Projects, Contractor will initially be required to provide a firm estimate of the cost and time period to complete the Assessment Phase (an “Assessment Phase Estimate”) and a high level non-binding estimate of the cost and time period to complete the remainder of the Project (the “Non-binding Estimate”). Upon completion of the Assessment Phase, Contractor will be required to provide a firm Project Estimate of the cost and time period to complete the remainder of the Project.

(c) **Basis For Estimates.** All Estimates will be based on a reasonable and good faith estimate of the amount of time of Contractor Personnel in each applicable labor category that is required to complete the Project Work covered by the Estimate multiplied by the Personnel Rates. Volume discounts as described in Section 9.1(b) will be used in determining the applicable Personnel Rates. There shall be no charge to Exelon for providing Estimates.

(d) **Acceptance of Estimates.** Exelon will review each Project Estimate and Assessment Phase Estimate and notify Contractor within a reasonable period of time whether Exelon accepts or rejects the Estimate. Estimates shall be held open for at least sixty (60) days. If Exelon accepts a Project Estimate or Assessment Phase Estimate, the Parties will complete a Task Order that includes the Estimate and the additional items described in Exhibit A. Contractor shall perform the Project Work in accordance with the Task Order. If an Assessment Phase is performed and a Project Estimate for the remainder of the Project is subsequently accepted by Exelon, the Task Order covering the Assessment Phase will be modified to include the Project Work and Project Estimate for the remainder of the Project. If Exelon rejects a Project Estimate or Assessment Phase Estimate, Contractor shall not perform or charge for any Project Work described in such Estimate.
(e) **Scope Changes.** Exelon may propose changes to the scope of Project Work at any time. If Exelon proposes a change that is likely to materially increase or decrease Contractor’s estimated cost of performing the Project Work, or to materially increase or decrease the time period within which Contractor will complete the Project Work, Contractor will promptly provide Exelon with a revised Estimate that reflects such changes in cost and completion time. If the changes proposed by Exelon will materially increase cost or completion time, the Parties will use reasonable efforts to develop approaches to implementing such changes that will minimize the amount of the increase in cost and completion time. If the revised Estimate is accepted, the Parties will modify the Task Order to reflect the changes. Except as provided herein, no modifications to the Task Order shall be effective, and no work shall be performed pursuant thereto, until reduced to a writing that identifies itself as a modification to the Task Order and signed by authorized representatives of both Parties. Any changes embarked upon by Contractor prior to such execution of the modification will be at Contractor’s risk and cost. Upon execution of the modification, the work described therein shall be deemed Services for all purposes under these Terms and Conditions.

(f) **Completion of Project Work.** Project Work will be considered to be successfully completed when:

(i) Contractor has delivered to Exelon all Deliverables relating to such Project Work, including complete and accurate documentation for the Deliverables (where applicable); and

(ii) the Deliverables conform to the Project requirements and specifications, and pass all performance and acceptance testing requirements.

The determination of whether Project Work has been successfully completed will not be based on any sign-offs or approvals which may have been given by Exelon prior to completion of all Deliverables for the Project. Performance and acceptance testing requirements for each software Deliverable shall include integration testing to ensure that such software Deliverable operates properly in combination with all other software with which it is intended to be interoperable. For clarification, Project Estimates for each Task Order shall include Contractor’s estimated charges for performing such integration testing and correcting any Defects in any software Deliverable relating to the interoperability of such software Deliverable with other software with which it is intended to be interoperable.

(g) **Project Charges.** Contractor’s charges for the Project Work will equal:

(i) the lesser of (A) the actual number of Person Days that Contractor Personnel expend in performing the Project Work multiplied by the Personnel Rates for the applicable labor categories, as adjusted for applicable discounts under Section 9.1(b) below, or (B) Contractor’s firm estimate of the labor charges for such Project Work as stated in its Project Estimate or Assessment Phase Estimate (as applicable), as such Project Estimate may be adjusted pursuant to Section 3.1(e) above; plus

(ii) incidental expenses to the extent reimbursable under Section 9.2.

(h) **Invoicing.** Contractor shall invoice Exelon for a Project upon successful completion of all Project Work, provided that, if there is an Assessment Phase, Contractor shall invoice Exelon for all Project Work that is part of the Assessment Phase upon successful completion of such Assessment Phase. For Projects that are estimated to exceed one hundred twenty-five (125) Person Days, Contractor shall invoice Exelon monthly in arrears, provided that Exelon may withhold a retainage equal to thirty percent (30%) of Contractor’s charges until all Project Work is successfully completed.

(i) **Termination of Project.** Exelon may terminate the Task Order for any Project at any time without liability (except as stated below in this Section 3.1(i)) upon written notice to Contractor. Contractor may charge Exelon for the Project Work properly performed to the time of
termination at the Personnel Rates (as adjusted for discounts under Section 9.1(b) below) unless Exelon terminates the Task Order pursuant to Section 3.1(j)(ii) below (in which case the applicable remedies set forth therein shall apply). The total amount charged by Contractor will not exceed Contractor’s Project Estimate or Assessment Phase Estimate (as applicable). At Exelon’s request, Contractor shall promptly deliver all Developed Material (including work in progress) to Exelon.

(j) Remedies.

(i) Contractor recognizes that **TIME IS OF THE ESSENCE IN COMPLETING MILESTONES** and that its failure to successfully complete a Milestone by the scheduled completion date in a Task Order may have a material adverse impact on Exelon’s business and operations, and that the damage caused by such delay may not be susceptible of precise determination. Accordingly, if a Milestone is not properly completed by the required completion date, then in addition to any non-monetary remedies available to Exelon under the Terms and Conditions, at law or in equity, Exelon may assess liquidated damages in an amount equal to five percent (5%) of the total Project Estimate or Assessment Phase Estimate (as applicable) that relates to such Milestone (the “Milestone Estimate”) for each day that the Milestone is late. The assessment of such liquidated damages shall be Exelon’s sole and exclusive monetary remedy for damages caused by such delay, but shall not in any way limit or be treated as an offset or credit against amounts recoverable from Contractor under Section 3.1(j)(ii) below.

(ii) If Contractor fails to properly complete any Milestone within ten (10) days after the required completion date, Exelon may:

(A) require Contractor to continue performing Project Work until such Milestone is properly completed;

(B) itself or through the use of a third-party (to which Contractor will provide all necessary cooperation and assistance) complete the Milestone at Contractor’s expense;

(C) accept the Deliverables associated with such Milestone in their deficient state and equitably reduce Contractor’s charges for performing the Project Work to reflect the deficiencies in the Deliverable; or

(D) terminate the applicable Task Order and obtain a refund for all amounts paid to Contractor under the Task Order (in which case Exelon will have no rights to the Developed Material developed by Contractor under the Task Order).

(iii) The date by which Contractor is required to complete a Milestone will be extended to the extent reasonably required as a result of any material delay caused by the failure of Exelon to perform its responsibilities specified in the applicable Task Order in a timely manner, provided that Contractor (1) promptly notifies Exelon in writing of any such failure and its potential impact on the schedule, and (2) uses all commercially reasonable efforts to work around such failure and complete such Milestone by the original scheduled completion date (or as close thereto as possible). In no event will any such extension of a scheduled completion date exceed the number of days of delay by Exelon.

(iv) A Milestone shall be considered to be completed when all Project Work required to be completed by the scheduled completion date for such Milestone has been successfully completed by Contractor. As used in this Section 3.1(j), the term “Milestone” shall refer to Milestones that are payment Milestones under a Task Order. In the case of Projects that do not have payment Milestones (i.e., no payments are due until the entire Project is completed), the term Milestone, as used in this Section 3.1(j), shall refer to the completion of the entire Project.
(k) Competitive Bids. Exelon may elect to solicit bids from more than one vendor for any particular Project Work, in which case Exelon will specify any modifications to the process outlined above in the document soliciting such bids.

4. TERM

These Terms and Conditions shall be effective as of the Effective Date. Notwithstanding anything herein to the contrary, the termination of these Terms and Conditions shall not affect or excuse the performance of either Party pursuant to any then effective Task Order(s), except as otherwise provided in Article 13 (Termination).

5. PERSONNEL

5.1 Engagement Managers.

(a) Contractor Engagement Manager. Contractor will assign an experienced manager (the “Contractor Engagement Manager”) who will: (i) oversee and manage the performance of Contractor’s obligations under these Terms and Conditions (which shall include the responsibility to see that all Milestones are met on-time and that all Deliverables satisfy the requirements of these Terms and Conditions); (ii) serve as Exelon’s primary point of contact for operational matters pertaining to these Terms and Conditions; (iii) have the authority to make binding commitments on behalf of Contractor; and (iv) promptly answer Exelon’s queries and cooperate with Exelon to address issues relating to the Services deemed urgent by Exelon. If required by a Task Order, the Contractor Engagement Manager shall be located at Exelon’s offices during the Term.

(b) Exelon Engagement Manager. Exelon will assign an individual who will serve as Exelon’s primary point of contact with Contractor for all matters pertaining to these Terms and Conditions (the “Exelon Engagement Manager”). The Exelon Engagement Manager will be responsible and authorized to accommodate reasonable requests by the Contractor Engagement Manager for Exelon Information, data and support of a type specified in the Task Orders.

5.2 Key Contractor Personnel.

(a) “Key Contractor Positions” shall be the positions set forth as such in Exhibit B. The Contractor Engagement Manager shall be one of the Key Contractor Positions. If and to the extent specified in a Task Order, Contractor shall cause each of the individuals filling the Key Contractor Positions to devote substantially full time and effort to the provision of the Services under such Task Order. Individuals approved as of the Effective Date to fill the Key Contractor Positions are listed in Exhibit B.

(b) Exelon may from time to time change the positions designated as Key Contractor Positions under these Terms and Conditions, provided that without Contractor’s consent, the number of Key Contractor Positions shall not exceed the number specified in Exhibit B as of the Effective Date.

(c) Before assigning an individual to a Key Contractor Position, whether as an initial assignment or a subsequent assignment, Contractor shall notify Exelon of the proposed assignment, introduce the individual to appropriate Exelon representatives, provide such representatives upon request with the opportunity to interview the individual, and provide Exelon with a resume and other information about the individual reasonably requested by Exelon. If Exelon in good faith objects to the proposed assignment, the Parties shall attempt to resolve Exelon’s concerns on a mutually agreeable basis. If the Parties have not been able to resolve Exelon’s concerns within five (5) business days, Contractor shall not assign the individual to that position and shall propose to Exelon the assignment of another individual of suitable ability and qualifications. Unless otherwise approved in writing by Exelon, and except in the case of death, disability, illness, termination of employment or other grave personal circumstances, individuals filling Key Contractor Positions may not be
transferred or re-assigned until a suitable replacement has been approved by Exelon, and no such transfer shall occur at a time or in a manner that would have an adverse impact on delivery of the Services. Contractor shall establish and maintain an up-to-date succession plan for the individuals serving in Key Contractor Positions.

5.3 Contractor Personnel.

(a) Contractor shall provide an adequate number of Contractor Personnel who are qualified and capable of performing the tasks assigned to them in a timely and high quality manner.

(b) Contractor shall not remove or reassign any of Contractor Personnel prior to completion of all of their assigned tasks, except in the case of death, disability, illness, termination of employment or other grave personal circumstances. Contractor shall use all reasonable efforts, consistent with Exelon’s resource requirements and staffing preferences, to minimize turnover on Exelon’s account and staff new work with qualified personnel who have gained experience with Exelon on prior projects.

(c) Exelon shall have the right to require removal of any Contractor Personnel on the Exelon account that Exelon determines not to be in the best interests of Exelon. Subject to the other provisions of these Terms and Conditions, Contractor shall promptly replace the Contractor Personnel removed from Exelon’s account with replacement Contractor Personnel of equal or superior ability, experience and qualifications. Nothing in these Terms and Conditions shall be deemed to give Exelon the right to require Contractor to terminate any individual’s employment or contractual relationship with Contractor; it is intended to give Exelon only the right to require that Contractor discontinue using such individual in the performance of Services.

(d) Vacation time for Contractor Personnel will be scheduled so as not to interfere with the deadlines or scheduled completion date for any work being performed under any Task Order.

(e) During the Term and for a period of six (6) months after its expiration or termination, neither Contractor nor any of Contractor’s Affiliates or subcontractors will, without the prior written consent of Exelon, directly or indirectly (i) solicit Exelon employees or contractors who are or were associated with the Services or Deliverables provided pursuant to these Terms and Conditions to seek employment or other contractual arrangements with Contractor or any of Contractor’s Affiliates or subcontractors, or (ii) employ or otherwise engage the services of any person who was an employee or Independent Contractor of Exelon and associated with the Services or Deliverables provided pursuant to these Terms and Conditions within six (6) months of the proposed employment or engagement. General advertising for employment made by Contractor or its Affiliates or subcontractors will not be deemed solicitations for employment for purposes of the immediately preceding sentence.

6. CERTAIN VENDOR RESPONSIBILITIES

6.1 Exelon Standards.

(a) General. Contractor shall ensure that Contractor 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. Contractor Personnel may be required to attend training classes on such standards, policies and procedures at no additional cost to Exelon.

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

6.2 Use of Contractor Personnel

(a) Contractor shall comply with Exelon’s Policies and Procedures pertaining to use of contractors as specified in Exhibit F hereof, or the Contract Documents. For purposes of this Section 6.2, all terms with initial capitalization that are not otherwise defined herein, shall be as defined in such Policies and Procedures.

(b) Contractor, in furnishing the Project Work, is acting as an independent contractor, and Contractor has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all Project Work to be provided by Contractor under these Terms and Conditions. All Contractor Personnel who perform any portion of the Project Work hereunder for Contractor shall be, and remain, employees of Contractor, and Contractor will be solely responsible for payment of compensation to such persons as well as all applicable federal, state and local income and employment tax withholding and reporting for all such Contractor Personnel. Neither Exelon, nor its Affiliates, or their subsidiaries and successors (the “Exelon Entities”) are, or shall be construed to be, an employer (common law or otherwise), co-employer or joint employer of any Contractor Personnel. Neither Contractor (or its Subcontractors) nor any Contractor Personnel is an agent of the Exelon Entities, and no such party or person has any authority to represent the Exelon Entities as to any matters, except as expressly authorized in the Contract Documents. Contractor will assume full responsibility for payment of all federal, state, provincial and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to all Contractor Personnel. Should any of the Exelon Entities be required to pay any amount to a governmental agency for failure by Contractor (or its Subcontractors) to withhold any amount as may be required by Law, Contractor shall indemnify each of the Exelon Entities for any amount so paid, including interest, penalties and fines.

(c) Neither Contractor nor its Subcontractors will: (1) assign either (a) any Contractor Personnel to perform Staff Augmentation work for the Exelon Entities, or (b) any Retiree to perform any work for the Exelon Entities, for a total period of time (including time under these Terms and Conditions or any other agreement or through Contractor, its Subcontractors or any other third party employer and without regard to hours worked), in excess of 1 year, unless Exelon grants a written exception for such Contractor Personnel to the time limit; or (2) report income for any of its Contractor Personnel performing Staff Augmentation work to the Exelon Entities, to the IRS on Form 1099; or (3) allow any Contractor Personnel to commence work for the Exelon Entities until an executed Third Party Personnel Acknowledgement (as defined below) has been received by Contractor.

(d) Prior to commencement of Project Work by any Contractor Personnel, Contractor (or its Subcontractor), shall obtain from such Contractor Personnel, either directly or through its Subcontractors, a written acknowledgement from all proposed such Contractor Personnel, or its Subcontractor, substantially in the form of Exhibit D attached hereto (the “Third Party Personnel Acknowledgement” or “TPPA”). Contractor shall maintain the original of each TPPA for Contractor Personnel for a period of six (6) years following the termination of Contractor Personnel.

(e) Based upon such executed Third Party Personnel Acknowledgements and prior to commencement of any Project Work by any such proposed new Contractor Personnel, Contractor shall provide to Exelon’s Designated Representative a written notice that identifies the names (and if possible the former Exelon or Affiliate Employee identification number) of Contractor Personnel assigned to provide Project Work to Exelon who identify themselves as a former employee of one of the Exelon Entities or a Retiree of one of the Exelon Entities (a “Notice of Former Employees/Retirees”). Notwithstanding any other provision of these Terms and Conditions, Exelon reserves the right, to request additional information about any Contractor Personnel, to reject any
proposed Contractor Personnel, and to request the removal (with or without replacement) of any or all Contractor Personnel from performing Project Work for Exelon hereunder and/or from any Exelon worksite at any time at its sole discretion. In the event Exelon rejects any proposed Contractor Personnel or requests the removal of any Contractor Personnel from any Project Work and/or Exelon worksite Contractor shall promptly remove such Contractor Personnel from providing Project Work to Exelon and provide a suitable replacement that meets all requirements of the Contract Documents. In the event Exelon requires the removal of any Contractor Personnel, Contractor shall also ensure a prompt and smooth transition of all knowledge, information and data from such Contractor Personnel to his or her replacement. The rejection or removal of any Contractor Personnel shall not be deemed a request or demand by Exelon that Contractor (or its Subcontractor) suspend or terminate the employment of any Contractor Personnel.

(f) In addition to any other audit rights under the Terms and Conditions, Contractor agrees that Exelon, or any of its authorized representatives acting on Exelon’s behalf, may upon reasonable request, audit Contractor’s files and records regarding the utilization of Contractor Personnel hereunder, including, without limitation all TPPA’s, personnel, employment eligibility verification, and wage and hour records. This section shall survive termination of these Terms and Conditions, and any Task Order issued hereunder, for a period of six (6) years. Contractor shall promptly remedy any violation and shall certify the same to Exelon in writing. The fact that Exelon inspects, or fails to inspect, or has the right to inspect, Contractor’s books and records shall not relieve Contractor of its responsibility to comply with the terms of these Terms and Conditions and with such laws, nor shall Exelon’s: (i) failure to detect or (ii) detection, but failure to notify Contractor or require Contractor’s remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of Exelon’s enforcement rights under these Terms and Conditions.

(g) At Exelon’s request, Contractor agrees to participate in Exelon-provided training regarding Exelon rules, policies, and requirements. Contractor shall not charge Exelon for such training time, provided Exelon pays for the training course(s).

6.3 Background Examinations.

6.3.1 Contractor will be required to conduct background investigations in accordance with this Section (“Investigation”) for any Contractor Personnel who will (1) have access to any Exelon or its Affiliates’ assets, including buildings, properties, computer systems, trade secrets, confidential data and/or employee or customer information, and/or (2) have contact with any Exelon or its Affiliates’ customers. Such Investigations must be completed for each Contractor Personnel prior to the first day upon which such Contractor Personnel begins to provide the Services. The purpose of the background investigation is to ensure application of an appropriate level of security to Contractor Personnel who may affect the reliability, safety and integrity of Exelon’s business and assets. At a minimum, the Investigation must include the following:

- Use as Investigation search components the applicant’s date of birth and all names/aliases provided or identified during the investigation

- SSN Verification and Trace

- Searches of:
  - National criminal database, such as the National Crime Information Center (NCIC) or the Widescreen Plus National Criminal Search
  - 7 year county and, if available, local municipality criminal database search using addresses from the previous seven years
- 7 year Federal District Court criminal database search using addresses from the previous seven years
- 7 year State Law Enforcement Verification using addresses from the previous seven years
- The National Sex Offender & Violent Abuse Registry
- Global OFAC
- 7 year Employment Verification
- Education Verification – Highest completed
- 5-panel Drug Test

Contractor is responsible for initiating, evaluating and completing all background investigations in accordance with the Fair Credit Reporting Act and any applicable Laws.

6.3.2 Additionally, any Contractor Personnel who will have access to Personal Information, as defined below, of an employee of Exelon or of a customer of Exelon; trade secrets related to business strategy or business plans; or non-public financial information related to the Exelon’s financial or strategic direction will be required to have a credit check. Any requirement for a Contractor Personnel to have a credit check as set forth in this Section 6.3.2 will be addressed in the applicable Task Order between the Parties.

“Personal Information,” as used in this Section 6.3 is defined as information about a person that could be used to distinguish, trace or assume the identity of a person and includes any combination of the employee of Exelon’s or customer of Exelon’s first name and last name or first name initial and last name with any one of the following identifiers: social security number, date of birth, driver’s license or state ID number, place of birth, mother’s maiden name, or biometric records).

6.3.3 The Investigation shall be a minimum requirement, and some Exelon business units or departments may have more stringent background investigation requirements for particular roles as permitted or required by applicable Law, including: (1) license or professional certification verifications; (2) physical and psychological examinations, including random drug testing; (3) education verifications; and/or (4) driver’s license/MVR check. Any requirement to have the additional background investigation set forth under paragraph (c) will be addressed in the applicable Statement of Work between the parties.

6.3.4 Contractor shall not permit any Contractor Personnel to perform the Services hereunder if a background investigation shows any items that would likely have a negative impact upon the Services. For each Contractor Personnel, Contractor will submit a written background investigation certification (letter or affidavit) confirming that the Investigation has been conducted in accordance with the requirements of this Section and that no material items were discovered in the Contractor Personnel’s Investigation which would impact performance of the Services to Exelon. In all situations, Contractor will evaluate the eligibility of all Contractor Personnel in accordance with all applicable Laws, including but not limited to federal guidance related to the use of criminal records issued by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs. An individual with a history of one or more convictions of a crime may be deemed to pose an unacceptable safety or security risk to Contractor or Exelon or its Affiliates and therefore may be removed from further consideration for the position in question. At a minimum,
Contractor will consider the nature and gravity of the offense or conduct; the nature of the duties of the job the individual would be assigned; the number of offenses for which the individual was convicted; the age of the individual at the time of conviction, or release from incarceration; evidence that the individual has performed the same type of work, post conviction, with no known incidents of criminal conduct; the length and consistency of employment history before and after the offense or conduct; rehabilitation efforts, e.g., education/training; employment or character references; whether the individual is bonded under a federal, state, or local bonding program and any other information regarding fitness for the particular position. At all times, the guiding principle shall be whether this particular applicant/employee based on all of the factors set out above, presents an unacceptable safety or security risk. Contractors shall not consider arrests that do not result in findings of guilt unless Contractor has evidence that the individual has engaged in the conduct for which he or she was arrested. Similarly, where a credit report is required, Contractor shall make an individualized assessment whether this particular applicant/employee represents an unacceptable safety or security risk. Applicants shall not be rejected based merely on evidence that, through no fault of their own, they have been unable to pay their bills.

6.3.5 If required by Exelon, Contractor will provide a photograph of each Contractor Personnel to Exelon prior to the start of the Services onsite meeting the following requirements;

- The image must be in color and must be clear with no distortions of any kind
- The image should be taken against a white background
- The image should be centered in the photo from the top of the shoulders to the top of the head. Do not include anything below the shoulders in the photo
- No sunglasses or headwear of any kind, unless for religious purposes
- Must be sent in JPEG format
- Image files must be named for the badge holder and in JPEG format (e.g., badge holder name.jpg) with pixel resolution set to 640 pixels wide by 480 pixels tall

6.3.6 Contractor shall immediately notify Exelon in writing when any Contractor Personnel: (i) no longer requires access to Exelon’s or its Affiliates’ assets, (ii) a Contractor Personnel is terminated or his or her employment is otherwise ended, or (iii) the Services are either completed or terminated, so that Exelon can discontinue access for such Contractor Personnel. Contractor shall immediately notify Exelon to terminate access to Sites for any Contractor Personnel that is: (i) suspended or terminated from employment for cause, or (ii) that Contractor reasonably believes may pose a threat to the safe working environment at or to any Site, including to employees, customers, buildings, assets, computer systems, trade secrets, confidential data, and/or employee or customer information and Contractor shall take all steps reasonably necessary to immediately deny such Contractor Personnel access to the Site and its customers, and return to Exelon any Exelon-issued property including, but not limited to, Exelon photo ID badge, keys, parking pass, documents, or laptop in the possession of such Contractor Personnel.

6.3.7 Except for background investigations performed by Exelon, Contractor will be responsible for conducting the Investigation at its own expense and shall not be entitled to recover costs thereof unless both Parties agree, in writing, in advance of the background investigation.
6.3.8 Exelon may perform a background check on Contractor Personnel if Exelon determines that Contractor performs any work or Services relating to the Critical Cyber Assets of Company, and Contractor will fully cooperate with Exelon including but not limited to obtaining consent from such Contractor Personnel, Contractor agrees that Exelon may provide such information to the North American Electric Reliability Corporation ("NERC"), the U.S. Federal Energy Regulatory Commission ("FERC"), or an entity with authority delegated from them in order for Exelon to demonstrate its compliance with all legal and regulatory requirements under the NERC Reliability Standard Requirements applicable to Critical Cyber Assets.

6.3.9 Exelon reserves the right to terminate the applicable Task Order(s) as set forth in Section 13.1(a) herein in the event of failure to comply.

6.3.10 Exelon shall have the right to audit Contractor’s compliance with the requirements of this Section at any time and from time to time upon reasonable notice. Contractor shall fully and promptly comply with such audit by Exelon or any Governmental Authority, and shall provide written evidence of its compliance with the terms herein.

6.4 Compliance with Laws.

In its performance of the Services, Contractor shall fully comply with all federal, state and local laws applicable to Contractor, including those laws regarding non-discrimination in employment, occupational health and safety, environmental protection, fair labor standards, employment of aliens, export controls and privacy. Contractor will be responsible for all worker eligibility (I-9) verification procedures for Contractor Personnel, 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. Contractor 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 Contractor Personnel, Contractor 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); (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). Contractor 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, Contractor 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 Contractor in advance), whichever is more stringent, in connection with the provision of Services at Exelon facilities. Contractor shall review and monitor the safety programs of its subcontractors to confirm that such safety programs are consistent with Contractor’s overall safety program for the provision of Services at Exelon facilities. Subject to Exelon’s specific obligations set forth in these Terms and Conditions with respect to safety at Exelon facilities, Exelon shall not be in charge of, or in any way responsible for, the safe performance of the Services. Contractor shall promptly notify Exelon, in writing, of any material changes in Contractor’s
safety program or if Contractor discovers any conflicts between Exelon’s and OSHA’s safety requirements. Contractor’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, Contractor shall not create a safety manual for any Services.

(c) Contractor and Exelon each agree to fully comply with the laws and regulations of the United States relating to the exportation of commodities or technical data, including but not limited to 15 CFR Parts 730 et seq., 10 CFR Part 110 and 10 CFR Part 810, as issued from time to time, or any successor laws or regulations. In the event of any ambiguity or inconsistency between the provisions of this Section and any other section of these Terms and Conditions, this Section herein shall be controlling. The receiving Party agrees to ensure that all receiving Party individuals who may have access to technical data that is controlled for export by the regulations noted above are generally or specifically authorized or licensed under such regulations. The receiving Party also agrees to contractually obligate any third party recipients of such information to comply with such regulations.

(d) Contractor warrants that when dealing with any government official, political party, party official or candidate for any political office, Contractor shall, and shall cause each of its Subcontractors (of any tier), and Contractor Personnel of each of them to fully comply with the provisions of all applicable anti-corruption laws including the U.S. Foreign Corrupt Practices Act and all relevant local anti-corruption laws. Specifically, Contractor warrants that in connection with any Project Work under this contract, it shall not directly or indirectly give, offer, or promise anything of value to any government official, official political party, party official or candidate for any political office for the corrupt purpose of influencing or inducing any act or decision by any government official or agency, or for the purpose of securing any improper advantage on behalf of Exelon. Contractor shall cause Contractor Personnel who perform Project Work under any Task Order outside of the United States to be trained annually regarding the requirements of all relevant anti-corruption laws and to annually certify the same.

6.5 Compliance with Applicable Exelon and Affiliate Policies and Procedures.

In the performance of any activities related to the Project Work, Contractor, Subcontractors, and Contractor Personnel involved in the Project Work, shall adhere at all times to the provisions of applicable Exelon and Affiliate Policies and Procedures listed in Exhibit F. Contractor acknowledges that it has received or been provided electronic access to copies of the applicable Policies and Procedures listed in Exhibit F. Exelon reserves the right to revise or update the Policies and Procedures from time to time, with or without notice to Contractor. At the request of Exelon, Contractor shall acknowledge in writing which Policies and Procedures it has reviewed.

6.6 Disaster Recovery and Business Continuity.

Contractor shall, at its own expense, develop, maintain, and submit to Exelon, a written Disaster Recovery Plan designed to meet file recovery needs and restoration of Work in the event of a disaster or a force majeure event that would otherwise affect the performance or delivery of the Work; and, which, at a minimum, shall include the following:

(a) The regular and timely back-up and storage of Buyer Data and Contractor data (on tapes or other storage media as appropriate) both on-site for efficient data recovery and off-site to provide protection against disasters;

(b) Schedules for conducting incremental and full back-ups (in accordance with applicable information technology industry standards) to capture data, and changes to data;

(c) The testing and audit of the data storage and recovery systems to be conducted at least semi-annually using industry recognized procedures and independent auditors (if recommended or
required by industry practice). In the event of a disaster, Contractor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan;

(d) Generate a report following each semi-annual test or audit and any disaster measuring performance against the Disaster Recovery Plan and identification of problem areas and plans for resolution; and,

(e) In the event of a disaster, Contractor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan.

6.7 Subcontractor Compliance.

Contractor shall require that all its Subcontractors comply with all requirements of this Article 6. If Contractor is unable to provide Exelon with data obtained or generated by its Subcontractors pursuant to this Article 6, Contractor shall grant Exelon the right to collect such data directly from Contractor's Subcontractors. To facilitate the transfer of such data, Contractor shall contractually obligate its Subcontractors to provide such data to Exelon.

6.8 Compliance with Legal Holds.

(a) Contractor, at its sole cost and expense, agrees to comply with any and all legal holds as issued by Exelon’s Legal Department. A legal hold suspends all document destruction procedures in order to preserve appropriate records under special circumstances, such as litigation or government investigations. Exelon’s Legal Department determines and identifies what types of records, documents, or data are subject to legal hold. Exelon's Legal Department will notify the Contractor if a legal hold is placed on records, documents, or data the Contractor or its Subcontractors control. Contractor must then preserve and protect the specified records, documents, or data in accordance with instructions from Exelon's Legal Department. A legal hold remains effective until it is officially released in writing by Exelon's Legal Department. If Contractor is uncertain whether specific records, documents, or data subject to a legal hold, those records, documents, or data should be preserved and protected until such time Exelon's Legal Department can confirm their relevancy.

(b) In the event records, documents, or data placed on legal hold are required for review by Exelon’s Legal Department, Contractor at its sole cost and expense will work diligently to export and deliver to Exelon’s Legal Department all relevant records, documents, or data in a form and manner that is reasonably reviewable.
6.9 Anti-Corruption Compliance.

Contractor warrants that when dealing with any government official, political party, party official or candidate for any political office, Contractor shall, and shall cause each of its Subcontractors (of any tier), and Contractor Personnel of each of them to fully comply with the provisions of all applicable anti-corruption laws including the U.S. Foreign Corrupt Practices Act and all relevant other anti-corruption laws. Specifically, Contractor warrants that in connection with any Project Work under these Terms and Conditions, it shall not directly or indirectly give, offer, or promise anything of value to any Contractor Personnel, government official, official political party, party official or candidate for any political office for the corrupt purpose of influencing or inducing any act or decision by any Contractor Personnel, government official or agency, or for the purpose of securing any improper advantage on behalf of Exelon or Contractor. Contractor shall cause Contractor Personnel who perform Project Work under any Task Order outside of the United States to be trained annually regarding the requirements of all relevant anti-corruption laws and to annually certify the same.

7. PERFORMANCE

7.1 General

(a) Contractor, as part of its total quality management process, shall provide continuous quality assurance and quality improvement through: (i) the identification and application of proven techniques and tools from other installations within its operations (i.e. “Best Practices”); and (ii) the implementation of concrete programs, practices, and measures designed to improve performance. Contractor shall utilize effective project management in performing the Services.

(b) Performance will be measured by a mutually agreed set of Performance Measures specified for each Task Order. In addition, Contractor will maintain a Balanced Scoreboard (covering all Projects), contents to be mutually agreed upon, which shall be updated and reported to Exelon monthly. Performance Measures will include the following:

Milestones- On-time delivery
Cost variances
Defect rate – one (1), three (3), and six (6) months of production – defects per one hundred (100) hours of work
Percent of time spent on rework
Changes requested/approved
Customer satisfaction
Errors discovered in testing
Satisfaction with personnel and personnel skill levels

7.2 Reports and Meetings.

(a) Contractor shall submit periodic progress reports on the progress of its work to Exelon on a weekly basis or as otherwise specified in the Task Orders.

(b) The Contractor Engagement Manager shall conduct regular review meetings which will be attended by senior representatives from Contractor as requested by Exelon. During such meetings, the Parties will consider progress to date to ensure that work-in-progress (including as related to any Deliverables and any Milestones) is achieved by scheduled completion dates and within budget. The Parties will, as appropriate, mutually determine any other meetings to be held between representatives of Exelon and Contractor.
7.3 Work-in-Progress Reviews.

Periodically, or as reasonably requested by Exelon, Contractor will provide to Exelon, or allow Exelon a reasonable opportunity to review, work-in-progress so that Exelon may monitor progress towards the timely completion of such work (and the delivery of any associated Deliverables). Exelon reserves the right to participate in all operational and performance-related meetings between Contractor and its subcontractors. Contractor shall notify Exelon in advance of all such meetings in order to enable Exelon to participate in the same.

7.4 Time of Performance.

Contractor recognizes that **TIME IS OF THE ESSENCE**. The schedule for performance of the Services will be set forth in the Task Orders. If at any point in time Contractor becomes aware of any circumstance that may jeopardize the delivery of any Deliverable or the completion of any Milestone by the scheduled completion date, Contractor shall promptly notify Exelon. The Parties agree to work together to identify action plans to minimize the delay.

7.5 Use of Subcontractors.

(a) Contractor shall not delegate or subcontract any of its obligations under these Terms and Conditions without Exelon’s prior written approval. Exelon shall have the right to approve or disapprove the use of proposed subcontractors not identified in these Terms and Conditions or a Task Order in its sole discretion. Subcontractors, and their respective functions, if any, who have been approved by Exelon, will be identified in each Task Order.

(b) Exelon shall have the right to revoke its prior approval of a subcontractor identified in the Terms and Conditions or a Task Order and direct Contractor to replace such 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.

(c) Contractor 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 Contractor’s employees and for purposes of these Terms and Conditions such work shall be deemed work performed by Contractor. Contractor shall be Exelon’s sole point of contact regarding the Services, including with respect to payment.

(d) Contractor shall not disclose Exelon Proprietary Information to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Proprietary Information in a manner substantially equivalent to that required of Contractor under these Terms and Conditions.

(e) Contractor shall ensure that each subcontractor performing any Services or providing any material under these Terms and Conditions shall have executed a written agreement, prior to the performance or provision thereof, that provides Exelon with the same Intellectual Property Rights in all Developed Material created by such subcontractor that Exelon would receive under Article 12 below if Contractor created such Developed Material itself under these Terms and Conditions.

7.6 Facilities and Assets.

(a) Exelon Facilities and Assets.

(i) Unless otherwise agreed by the Parties in a Task Order, Contractor Personnel assigned to perform Services shall perform such Services at Exelon facilities. To the extent that Contractor Personnel perform Services at Exelon’s facilities, Exelon will provide Contractor Personnel located at such facilities with a reasonable amount of office space and associated utilities, office
furniture and supplies, and workstation equipment and software as required to perform the Services. Such workstation equipment and software provided will be of a type that conforms to Exelon standards. Contractor may upgrade such equipment and software as Contractor considers appropriate and without charge to Exelon, provided that any such upgrade shall conform to Exelon standards unless permitted pursuant to an express written exemption from the Exelon Engagement Manager.

(ii) Contractor shall ensure that Contractor Personnel located at Exelon facilities comply with the Exelon security regulations particular to such facilities as to which Exelon has notified Contractor in advance.

(iii) Any Exelon facilities, utilities and other materials will be made available to Contractor on an “as is, where is” basis.

(iv) Contractor shall use due care while using any Exelon-owned assets that are provided to Contractor for Contractor’s use in performing the Services. If during the term of these Terms and Conditions such assets are to be located at Contractor’s premises, Contractor must maintain adequate physical security measures so as to prevent unauthorized access to or theft of such assets. Assets provided by Exelon for Contractor’s use in performing the Services must remain the absolute unencumbered property of Exelon. Under no circumstances may such assets be subject to any charge, lien or other interest of Contractor. Upon Exelon’s request, the termination or expiration of these Terms and Conditions for any reason (including termination for cause) or, with respect to any particular asset, on such earlier date that the same shall be no longer required by Contractor in order to render the Services hereunder, such assets shall be promptly returned to Exelon by Contractor.

(b) Contractor Facilities.

(i) Exelon must approve in writing the performance of any Services at facilities other than Exelon facilities. If Exelon grants approval for Contractor Personnel to split their time between Exelon facilities and Contractor facilities in performing Services (e.g., in order to reduce the amount of travel time of Contractor Personnel), Exelon reserves the right to revoke such approval at any time and/or to require that specific Contractor Personnel perform work at Exelon facilities on specific days (notwithstanding that Exelon had previously approved such Contractor Personnel working at Contractor facilities on such days).

(ii) To the extent that any Services are provided by Contractor Personnel at a Contractor facility, Contractor shall be responsible for providing all office space and associated utilities, office furniture and supplies, and workstation equipment and software, as required to perform such Services. Except as otherwise may be specified in such Task Order, the Personnel Rates shall apply to all Services performed by Contractor Personnel at a Contractor facility, and there shall be no additional charge to Exelon for the furnishing of such office space, utilities, furniture, supplies, workstation equipment and software at such Contractor facility. Exelon reserves the right to approve the location and any relocation of Contractor facilities at which Contractor Personnel perform any Services. Unless otherwise agreed in writing by the Parties, Contractor shall bear all costs and expenses of any relocations and any increased cost to Contractor in providing the Services from Contractor facilities (rather than from Exelon facilities).

7.7 Contractor Methodologies, Tools and Training.

(a) Contractor shall perform the Services using the languages, tools, methodologies and practices selected by Exelon. Contractor shall not use any languages, tools, methodologies and practices without Exelon’s prior written approval.

(b) With respect to the languages, tools, methodologies and practices that are proprietary to Contractor, or to any of its subcontractors, and are used in providing the Services or form part of the Deliverables or Project Work, Contractor hereby grants to Exelon, and will ensure that its
subcontractors grant to Exelon, a non-exclusive, royalty-free, perpetual, irrevocable, transferable, fully paid-up, world-wide license to use such languages, tools, methodologies and practices to make, have made, use, copy, display, operate, maintain, develop, support, modify, enhance and prepare derivative works of any Developed Material and any other existing or future systems, software or technology owned, licensed or operated by or on behalf of Exelon (collectively, “Exelon Technology”).

(c) With respect to any languages, tools, methodologies and practices that Contractor licenses from a third-party and are used in providing the Services or form part of the Deliverables or Project Work, Contractor shall obtain from such third-party on Exelon’s behalf a non-exclusive, royalty-free, perpetual, irrevocable, transferable, fully paid-up, world-wide license to such languages, tools, methodologies, and practices so that Exelon may use, make, have made, use, copy, display, operate, develop, maintain, support, modify, enhance and prepare derivative works of any Exelon Technology (including all Developed Material); provided, however, that Contractor shall not be required to obtain such license with respect to any third-party language, tool, methodology or practice if (i) the third-party is not an Affiliate of Contractor and (ii) the language, tool, methodology or practice (as applicable) is commercially available as a product offering of such third-party that may be separately licensed by Exelon and Contractor so informs Exelon in writing.

(d) The licenses granted under Sections 7.7(b) and 7.7(c) above will include the right for Exelon to sublicense and distribute the languages, tools, methodologies and practices described in Sections 7.7(b) and 7.7(c) above to (i) third-parties engaged to perform services for Exelon in connection with Exelon Technology, and (ii) direct and indirect customers of Exelon (and their designees) to the extent reasonably required to make, have made, use, copy, display, operate, develop, maintain, support, modify, enhance and prepare derivative works of any Exelon Technology that is made available to them by or on behalf of Exelon or its Affiliates, licensees or distributors (e.g., front end software to systems that enable Exelon and its customers to exchange data). Prior to sublicenseing or distributing any languages, tools, methodologies or practices described in Sections 7.7(b) and 7.7(c) above to any entity described in this Section 7.7(d)(i) or 7.7(d)(ii), Exelon shall have required such entity to have executed an agreement containing reasonable confidentiality protections that apply to such languages, tools, methodologies and practices.

7.8 Performance Incentives.

As a performance incentive for Contractor Personnel performing Services for Exelon, whether in connection with a particular Project or otherwise, Exelon may elect to fund a bonus pool in such amount as Exelon deems appropriate to be awarded to the Contractor Personnel based on criteria established by Exelon. Exelon shall have sole discretion as to:

(a) whether to fund a bonus pool;
(b) the amount of the bonus pool;
(c) the criteria for awarding the bonus pool;
(d) the determination of whether Contractor has met the criteria; and
(e) the portion, if any, of the bonus pool to be awarded to Contractor Personnel.

Any amount awarded by Exelon from a bonus pool shall be paid to Contractor. Contractor shall distribute the amount awarded by Exelon among the Contractor Personnel performing the Services to which the bonus pool relates in such proportions as Contractor deems appropriate. Contractor shall not distribute any bonus pool awards to Contractor Personnel who are more senior than the Contractor Engagement Manager. Contractor shall be responsible for all communications to Contractor Personnel regarding bonus pools funded by Exelon.
7.9 Acquisition Discount Programs.

At Exelon’s request, Contractor shall make available to Exelon any acquisition discount programs Contractor has with third-party vendors (to the extent permitted under such discount programs) in connection with Exelon’s acquisition of equipment and software related to the Services.

8. ACCEPTANCE OF DELIVERABLES AND TESTING

8.1 Acceptance of Deliverables.

The successful completion of Project Work requires the acceptance by Exelon of all Deliverables prepared and delivered pursuant to such Project Work. Upon completion of a Deliverable, Contractor 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 8. The acceptance process outlined below shall not be deemed to extend the scheduled completion date for any Deliverable specified in a Task Order.

8.2 Acceptance Procedures.

Acceptance by Exelon requires that the Deliverables be confirmed in writing by Exelon to meet applicable acceptance criteria which, in the case of Operational Deliverables, will include the successful completion of agreed-to acceptance and performance testing. In the case of Deliverables that are component parts of larger Deliverables, in addition to acceptance of the component Deliverables, the Deliverable comprised of the component Deliverables will also be subject to acceptance in its entirety. Acceptance test procedures for Deliverables will be prepared by the responsible Party as indicated in the applicable Task Order. The acceptance test procedures will be sufficiently rigorous so as to verify that the Deliverables meet all applicable specifications, acceptance criteria and performance requirements. Acceptance procedures for written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

(a) Written Deliverables.

(i) Contractor 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 Contractor. When Contractor 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 applicable Task Order (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 Contractor in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted in the form delivered by Contractor or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If Contractor does not receive any such notice from Exelon by the end of the Acceptance Period, Contractor shall promptly notify Exelon in writing that no such notice has been received. If Contractor does not receive the required notice within seven (7) days after
Exelon receives such written notification from Contractor, such written Deliverable will be deemed to be accepted by Exelon.

(iii) If Exelon delivers to Contractor a timely notice of deficiencies, Contractor will correct the described deficiencies as quickly as possible and, in any event, within ten (10) days after Exelon notifies Contractor of the deficiencies (unless otherwise specified in the applicable Task Order). Upon receipt of a corrected written Deliverable from Contractor, 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 applicable Task Order, prior to the date on which Contractor is scheduled to deliver each Operational Deliverable to Exelon, Contractor 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 Contractor has completed an Operational Deliverable, Contractor will deliver the Operational Deliverable to Exelon’s designated site and, where Contractor is responsible for installation, install such Deliverable and perform an installation test reasonably acceptable to Exelon to verify that the Deliverable has been properly delivered and installed. Contractor shall notify Exelon when the Operational Deliverable is Ready for acceptance, provided that such notice shall not occur prior to the successful completion by Contractor 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 applicable Task Order. 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 Contractor in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted in the form delivered by Contractor or describing the Defects as provided in Section 8.2(b)(iv) below. If Contractor does not receive any notice of Defects from Exelon by the end of the Acceptance Period, Contractor shall promptly notify Exelon in writing that no such notice was received. If Contractor does not receive a notice of Defects within seven (7) days after Exelon receives such written notification from Contractor, such Operational Deliverable will be deemed accepted by Exelon.

(iv) If Exelon determines during the Acceptance Period that the Operational Deliverable as delivered by Contractor deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (a “Defect”), Exelon will inform Contractor in writing, describing the Defect(s) in sufficient detail to allow Contractor to recreate them. Contractor will correct any Defects in an 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 applicable Task Order), 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. Contractor 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 Contractor of the further Defects, unless otherwise specified in the applicable Task Order or agreed to by Exelon.

9. FINANCIAL

9.1 Personnel Rates.

(a) Rates. Contractor’s Personnel Rates for performing Project Work shall be as set forth in Exhibit C attached hereto.

(b) Volume Discounts. Any discounts to the Personnel Rates agreed to by the Parties based on higher levels of overall usage of Contractor Personnel are set forth in Exhibit C. Such discounts shall apply based on the overall usage of Contractor Personnel as measured in terms of the aggregate total dollar amount of Contractor’s labor charges under these Terms and Conditions on a rolling twelve (12) month basis. Such volume discounts will be applied against the Personnel Rates prior to the application of any commitment discount and will begin to apply during the first twelve (12) months following the Effective Date once the initial threshold is met. Such volume discounts will be calculated on a monthly basis and apply prospectively based on when the Services are performed (rather than when Estimates are given or Services are invoiced).

(c) Fully Loaded Rates. The Personnel Rates set forth in Exhibit C are fully loaded rates that include: all equipment, software, computer time, supplies and office space required or used by Contractor Personnel in performing the Services to the extent such Services are performed at a Contractor facility pursuant to Section 7.6(b) above; the travel, lodging and meal expenses of Contractor Personnel (except to the extent provided in Section 9.2 below); and related overhead costs and administrative expenses.

(d) Minimum Hours. The Personnel Rates are based on the assumption of an eight (8) hour workday devoted to Exelon-specific work with charges for partial Person Days being prorated. In the event Contractor charges Exelon for more than eight (8) hours in a day or five (5) days in a calendar week ("Excess Work"), such Excess Work must be pre-approved by Exelon or otherwise agreed to in the applicable Task Order. For exempt, salaried Contractor Personnel eligible to receive compensation for Excess Work, Contractor shall not charge higher rates for Excess Work. For non-exempt, hourly Contractor Personnel, Contractor shall charge Exelon and pay such Contractor Personnel for Excess Work in accordance with applicable Law. Exelon-specific work does not include travel, sick leave, vacation, training and administrative functions.

(e) Timekeeping. Contractor must record time devoted to Exelon work in Contractor’s time keeping system. Contractor shall cause all Contractor Personnel performing Services to complete a daily time record in such time keeping system at the end of each work day describing in reasonable detail the work performed for Exelon during the day and the amount of time devoted to such work.

9.2 Incidental Expenses.

Exelon will reimburse Contractor for reasonable, documented travel, lodging and meal expenses of Contractor personnel engaged in performing Services under these Terms and Conditions 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 Contractor, 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 Contractor’s expenses incurred in performing the Services are included in the Personnel Rates.
9.3 Taxes.

The Parties’ respective responsibilities for taxes arising under or in connection with these Terms and Conditions shall be as follows:

(a) Each Party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts.

(b) Contractor shall be responsible for any sales, use, excise, value-added, services, consumption and other taxes and duties payable by Contractor on the goods or services used or consumed by Contractor in providing the Services where the tax is imposed on Contractor’s acquisition or use of such goods or services and the amount of tax is measured by Contractor’s costs in acquiring such goods or services.

(c) Contractor shall be responsible for any sales, use, excise, value-added, services, consumption or other tax that is assessed on the receipt or provision of the Services as a whole, or on any particular Service. If and to the extent such tax is reduced or eliminated during the Term, Contractor shall decrease its charges for the Services to the same extent as its tax burden is reduced or eliminated as a result of the reduction or elimination of such tax.

(d) The Parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Contractor’s invoices shall separately state the amounts of any taxes for which Exelon is legally responsible under these Terms and Conditions that Contractor is collecting from Exelon, and Contractor shall remit such taxes to the appropriate authorities in a timely manner. Exelon shall not be responsible for any interest or penalties assessed by a taxing authority arising from Contractor’s failure to remit the appropriate amount of tax on a timely basis. Each Party shall provide and make available to the other any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials or services, and other exemption certificates or information reasonably requested by the other Party.

(e) Contractor shall promptly notify Exelon of, and coordinate with Exelon the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which Exelon is responsible hereunder, it being understood that with respect to any claim arising out of a form or return signed by a Party to these Terms and Conditions, such Party shall have the right to elect to control the response to and settlement of the claim, but the other Party shall have all rights to participate in the responses and settlements that are appropriate to its potential responsibilities or liabilities. If Exelon requests Contractor to challenge the imposition of any tax for which Exelon is financially responsible hereunder, Contractor shall do so in a timely manner and Exelon shall reimburse Contractor for the reasonable legal fees and expenses it incurs. Exelon shall be entitled to any tax refunds or rebates granted to the extent such refunds or rebates are of taxes that were paid by Exelon.

9.4 Invoicing.

Contractor shall render in arrears a single consolidated invoice each month for the charges covered by such invoice. Such invoice shall include (a) a cover page that summarizes all billable charges for the month under all outstanding Task Orders, and (b) additional detail organized by individual Task Orders. The additional detail shall identify the particular Project (and Milestone, if appropriate) on which the charge is predicated and include the calculations used to establish the charge for such Project or Milestone, including the amount of the Estimate therefore and the names, levels and Personnel Rates of the persons performing Services and the number of Person Days worked by each Contractor Personnel. All invoiced amounts shall be in U.S. dollars.
9.5 Payment.

Invoices shall be payable by Exelon within forty-five (45) days after receipt of Contractor’s invoice which details amounts due under these Terms and Conditions. Exelon shall not be required to pay for charges that are not timely billed within ninety (90) days of the Invoice Date. For purposes hereof, the term “Invoice Date” shall mean: (i) with respect to Services that are billable on a monthly basis, the last day of the calendar month in which such Services are rendered; and (ii) with respect to Services that are billable on other than a monthly basis, (e.g., Project work that is billable at Milestones or upon completion of the Project), the last day of the calendar month in which vendor becomes entitled to invoice for such Services. All payments shall be made in U.S. dollars.

9.6 Accountability.

Contractor shall maintain complete and accurate records of and supporting documentation for the amounts billable to and payments made by Exelon hereunder, in accordance with generally accepted accounting principles applied on a consistent basis. Contractor agrees to provide Exelon with documentation and other information with respect to each invoice as may be reasonably requested by Exelon to verify accuracy and compliance with the provisions of these Terms and Conditions.

9.7 Disputed Charges; Set-Off.

Exelon may withhold payment of any charges that it disputes in good faith, and may set-off amounts Contractor owes Exelon as credits against charges payable to Contractor under these Terms and Conditions.

9.8 Services Covered.

Both Parties acknowledge that the charges specified in the Task Orders are intended to compensate Contractor fully for all Services and Deliverables to be performed or provided by Contractor pursuant to these Terms and Conditions. Accordingly, Exelon will not be obligated to pay Contractor any amounts in addition to those described in the Task Orders.

10. SAFEGUARDING OF INFORMATION; CONFIDENTIALITY; AUDIT RIGHTS

10.1 Exelon Information.

(a) Exelon Information shall be and remain the property of Exelon. Contractor shall not possess or assert any lien or other right against or to Exelon Information. No Exelon Information, or any part thereof, shall be sold, assigned, leased, or otherwise transferred to third-parties by Contractor or commercially exploited by or on behalf of Contractor, its employees or agents.

(b) Upon Exelon’s request, the termination or expiration of these Terms and Conditions for any reason (including termination for cause) or, with respect to any particular data, on such earlier date that the same shall be no longer required by Contractor in order to render the Services hereunder, such Exelon Information (including copies thereof) shall be promptly returned to Exelon by Contractor in a form reasonably requested by Exelon or, if Exelon so elects, shall be destroyed, and a written certification of destruction provided by Contractor.

(c) Exelon Information shall not be utilized by Contractor for any purpose other than that of rendering the Services under these Terms and Conditions.

10.2 Safeguarding Exelon Information.

(a) Contractor shall establish and maintain safeguards to protect against the unauthorized use, access, destruction, loss or alteration of Exelon Information, whether or not Proprietary Information, entered in software or equipment or otherwise recorded by or on behalf of Exelon or used by Contractor and any other material provided by Exelon in the possession of Contractor, which shall...
be no less rigorous than those maintained by Contractor for its own or any other customer’s information of a similar nature and in any event must be commercially reasonable.

(b) Without limiting the generality of Section 10.2(a) above:

(i) Contractor Personnel shall not attempt to access, or allow access to, any data, files or programs to which they are not entitled under these Terms and Conditions or to which they do not need access to perform the Services. If such access is attained, whether intentionally or inadvertently, Contractor shall immediately report such incident to Exelon, describe in detail any accessed materials and return to Exelon all copied or removed materials.

(ii) Contractor shall institute systems security measures to guard against the unauthorized access, alteration or destruction of Exelon Information. Such measures shall include the installation of software that: (A) requires all users to enter a user identification number and password prior to gaining access to the information systems; (B) controls and tracks the addition and deletion of users; and (C) controls user access to areas and features of the systems.

10.3 Confidentiality.

(a) “Proprietary Information” of a Party shall mean (i) information disclosed by such Party relating to product development strategy and activity, marketing strategy, corporate assessments and strategic plans, pricing, financial and statistical information, accounting information, identity of suppliers, software, systems, processes, formulae, inventions, discoveries, policies, guidelines, procedures, practices, disputes or litigation, (ii) other confidential, proprietary or trade secret information disclosed by such Party that is identified in writing as such at the time of its disclosure, (iii) all other confidential, proprietary or trade secret information disclosed by such Party, which a reasonable person would recognize as such (including because of the circumstances of disclosure or the nature of the information itself), (iv) information relating to such Party’s employees, contractors or customers which, if released, would cause an unlawful or actionable invasion of privacy, (v) any compilation or summary of information or data that is itself Proprietary Information; and (vi) Personally Identifiable Information. Without limiting the generality of the foregoing, Contractor acknowledges and agrees that all systems and software that are the subject of these Terms and Conditions are the Proprietary Information of Exelon and/or its third-party licensors. For purposes of these Terms and Conditions, 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, including Third-Party Licensors or to which a Party gains access in connection with these Terms and Conditions.

(b) As between the Parties and subject to Section 7.7 and Article 12 below, all Proprietary Information disclosed by or on behalf of one Party to the other in the course of performing under these Terms and Conditions or to which the other gains access in connection with these Terms and Conditions shall be deemed to be the property of the disclosing Party. The receiving Party agrees to (i) receive such Proprietary Information in confidence, (ii) use reasonable efforts to maintain the confidentiality of such Proprietary Information and not disclose such Proprietary 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 Proprietary 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 Proprietary Information solely in accordance with the terms of these Terms and Conditions, 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 Proprietary Information of which it becomes aware. The terms and conditions of these Terms and Conditions (as well as all information regarding the negotiation of these Terms and Conditions) shall be deemed to be the Proprietary Information of both Parties. Each Party
agrees that it shall abide by and reproduce and include any restrictive legend or proprietary rights notice that appears in or on any Proprietary Information of the other Party or any third-party that it is authorized to reproduce. Each Party also agrees that it shall not remove, alter, cover or distort any trademark, trade name, copyright or other proprietary rights notices, legends, symbols or labels appearing on or in any Proprietary Information of the other Party or any third-party.

(c) The restrictions on use and disclosure set forth above shall not apply when, and to the extent that the Proprietary 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 Proprietary 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 Proprietary 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 these Terms and Conditions without the prior written consent of the other Party, except (A) as provided in item (v) above, (B) to the extent necessary to permit the exercise of its rights or the performance of its obligations under these Terms and Conditions, or (C) to seek advice from its attorneys, accountants or other professional advisors.

(d) The provisions of this Section 10.3 shall survive the termination or expiration of these Terms and Conditions for any reason. Promptly following the termination or expiration of these Terms and Conditions for any reason and, subject to the other provisions of these Terms and Conditions, the Parties shall either destroy or deliver (as the Parties mutually agree) to the furnishing Party all Proprietary Information received during the performance of the Services.

(e) Nothing contained in this Section 10.3 shall be construed as obligating a Party to disclose its Proprietary Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Proprietary Information of the other Party. Nothing contained in this Section 10.3 shall be construed as limiting or diminishing in any respect the scope of any licenses granted under these Terms and Conditions.

10.4 Audit Rights.

(a) Contractor will provide to Exelon (via an Exelon internal audit staff or an outside independent audit firm as Exelon may from time to time designate in writing), access at all reasonable times to any facility or part of a facility at which either Contractor or any of its subcontractors is providing the Services, to equipment and software, to Contractor Personnel, and to data and records relating to Contractor’s performance of the Services, for the purpose of performing audits and inspections of either Contractor or any of its subcontractors to: (i) verify the accuracy of Contractor’s charges and invoices; and (ii) examine Contractor’s performance of the Services including, to the extent applicable to the Services performed by Contractor and to the charges therefore, performing (A) audits of practices and procedures, (B) audits of systems; (C) audits of general controls and security practices and procedures, (D) audits of the efficiency and cost-effectiveness of Contractor in performing the Services (but only to the extent affecting charges for, or timing of, Services hereunder), (E) any audit necessary to enable Exelon to meet applicable regulatory requirements, and (F) audits to determine Contractor’s compliance with the Terms and Conditions. Contractor will provide to such auditors and representatives such assistance, as they reasonably require. Contractor will cooperate fully with Exelon or Exelon’s designees in connection with audit functions. If Exelon performs such audits via an independent audit firm, Exelon shall cause such audit firm to agree in writing to protect
the confidentiality of Contractor’s Proprietary Information in a manner substantially equivalent to that required of Exelon under these Terms and Conditions prior to performing the audit. Exelon’s auditors and other representatives will comply with Contractor’s reasonable security requirements.

(b) If an audit uncovers any overcharge, Contractor shall immediately refund such overcharge (net of any undercharges uncovered by the audit) plus interest at the rate of one percent (1%) per month or the maximum amount permitted by law, whichever is less, from the date of payment of the overcharge by Exelon until the date the overcharge is refunded.

(c) Contractor 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.

(d) Contractor shall maintain and provide access upon request to records, documents and other information required to meet Exelon’s audit rights under these Terms and Conditions until the later of: (i) three (3) years after expiration or termination of these Terms and Conditions, or (ii) all pending matters relating to these Terms and Conditions (e.g., disputes) are closed.

10.5 SSAE 16 Audit

In lieu of an audit as set forth in Section 10.4 above, Contractor, in its sole discretion, may retain and undergo a Type II independent service audit examination (SAS 70), which concludes on both design and operating effectiveness of the service organization's internal controls, on an annual basis. Service Organization Controls (SOC) reports for service organizations will be prepared in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization. SSAE 16 supersedes Statement on Auditing Standards (SAS) No. 70. In respect to the examination:

(a) Type of SOC report (SOC1, SOC 2, SOC 3) will be agreed upon by Exelon to correspond to the services provided under a Task Order.

(b) Control objectives to be covered by the examination including those under the responsibility of the Contractor and those that fall within the areas of Exelon responsibility will be developed with input from Exelon to ensure Exelon's financial statement and operational assertions are achieved and that risks and corresponding controls are considered.

(c) Scope of examination coverage will encompass all services provided to Exelon necessary to meet the control objectives that are under responsibility of the Contractor.

(d) Timing of examination and subsequent release of the examination report will be set in consideration of Exelon's calendar year-end financial close and reliance thereon for complying with the Sarbanes Oxley Act (suggested examination period October 1 - September 30).

(e) Exelon will be supplied a copy of the examination report upon release by the independent service auditor.

(f) Contractor will provide responses to all identified control deficiencies reported as a result of the independent service examination, including background and cause of control breakdown, extent of breach due to the control deficiency, and intended resolution to remediate the control deficiency.

10.6 Safeguarding Personally Identifiable Information

If Contractor will have access to Personally Identifying Information of any type or kind of any Exelon customer or employee, then Exelon’s Special Terms and Conditions for Personally Identifiable Information shall be incorporated into these Terms and Conditions to afford additional protections for such information.
10.7 Compliance with Exelon Information Technology Standards.

The Contractor will maintain and apply security policies that meet or exceed information technologies security controls as required for and by Exelon owned/managed data and systems to ensure confidentiality, integrity, and availability. As Exelon required security controls significantly change, are identified, or as new controls are defined, the Contractor shall be notified and expected to comply. Exelon may audit such controls as defined in Section 10.4 (Audit Rights) and Section 10.5 (SAS 70 Audit) of these Terms and Conditions.

11. REPRESENTATIONS AND WARRANTIES

11.1 Performance of Work.

Contractor warrants that the Services furnished to Exelon under these Terms and Conditions will (1) comply with the Specifications contained in the Contract Documents, (2) be performed in accordance with the then prevailing applicable Laws, and industry standards and practices; and (3) be free and clear of all security interests, liens, encumbrances or claims of Contractor, Subcontractors and third-party suppliers, (4) be performed by qualified individuals with suitable training, education and skill to perform the Services.

11.2 Non-Infringement.

Contractor represents, warrants and covenants that none of the following infringes any Intellectual Property Rights of any third-party, or contain confidential or proprietary material misappropriated by Contractor from any third-party: Developed Material; Project Work; Contractor Material or material created or supplied by any subcontractor; any products, processes, computer software, software modules, media, documentation and other materials provided by Contractor or used in connection with the performance of any Services; and the possession or use of any of the foregoing by Exelon or its customers or licensees as contemplated by these Terms and Conditions or provided by Contractor to Exelon. Contractor further represents, warrants and covenants that with respect to any third-party software products provided to Contractor by Exelon for Contractor’s use in performing the Services, Contractor shall use such products only as permitted by the license or other terms governing the use of such products (as communicated to Contractor by Exelon or the third-party vendor/manufacturer of such products) and shall not otherwise take any action that would constitute an infringement of the Intellectual Property Rights held in or to such products by such third-party vendors/manufacturers. The foregoing warranties will not apply to the extent infringement is caused by (i) modifications of Developed Material or Deliverables by a party other than Contractor or its subcontractors, agents or representatives, (ii) their combination with items or products not provided or recommended by Contractor, or (iii) their conforming to designs, specifications or instructions provided by or at the direction of Exelon (as opposed to the manner in which such designs, specifications or instructions are implemented by Contractor).

11.3 Deliverables.

(a) Contractor represents, warrants and covenants that each Deliverable developed by Contractor pursuant to the Task Orders will, from the date of acceptance by Exelon until one hundred eighty (180) days after the first date on which all software Deliverables developed under a Task Order or series of related Task Orders are operating in a production environment (the “Deliverables Warranty Period”): (i) conform to all specifications, requirements and performance criteria for such Deliverable set forth in the applicable Task Order (including the requirement that the software Deliverables operate properly in combination with all other software with which they are intended to be interoperable); and (ii) be free from material defects.

(b) If, with respect to any Deliverable, Contractor is given written notice of breach of this warranty within the Deliverables Warranty Period, Contractor will, at no cost to Exelon, promptly
modify such Deliverable to cause it to conform to its specifications, requirements and performance criteria.

(c) If the nonconformance gives rise to a problem that has a significant impact on Exelon’s business, Contractor will immediately deploy a team of qualified Contractor Personnel that will work continuously on the problem until resolved. Such team will include the most capable and experienced personnel who participated in the development of the Deliverable to the extent such Contractor Personnel remain within Contractor’s organization and regardless of other assignments they may have at the time.

11.4 Viruses and Disabling Code.
Contractor represents, warrants and covenants that Contractor will ensure that no computer viruses or similar items are coded or introduced into any software Developed Material or the systems used to develop such Developed Material, and Contractor will not insert into any software Developed Material any code which would have the effect of disabling or otherwise shutting down all or a portion of such software or damaging information or functionality.

11.5 Warranty Disclaimer.
OTHER THAN AS PROVIDED IN THIS AGREEMENT (INCLUDING ANY TASK ORDER), THERE ARE NO EXPRESS WARRANTIES AND THERE ARE NO IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

12.1 Exelon Material.
As between Exelon and Contractor, Exelon (or, to the extent applicable, Third-Party Licensors) shall own all ownership rights and IP Rights in and to all Material that Exelon creates, furnishes or makes available in connection with these Terms and Conditions ("Exelon Material"). Subject to any limitations or restrictions set forth in agreements between Exelon and Third-Party Licensors, Exelon grants Contractor a nonexclusive, no-charge license during the Term to operate, maintain, modify, enhance and prepare derivative works of, and otherwise use the Exelon Material in accordance with these Terms and Conditions for the sole purpose of providing the Services to Exelon.

12.2 Developed Material.

(a) Subject to Sections 12.3 and 12.4 below, all Project Work including all drafts and versions thereof, created pursuant to these Terms and Conditions, whether solely by Contractor, or jointly with others ("Developed Material"), hereby belongs solely and exclusively to Exelon, and Exelon owns all ownership rights in and to such Developed Material, and all IP Rights associated therewith. Contractor shall include and enforce appropriate provisions in all subcontracts to ensure Exelon’s exclusive ownership of Developed Material as set forth herein. Exelon (including its successors and assigns) shall have the right to obtain and to hold in its own name patents, copyrights, trademarks, registrations, and such other Intellectual Property Rights and protection as may be appropriate.

(b) To effectuate the foregoing, it is expressly understood and agreed that all Developed Material shall be works made for hire under U.S. copyright laws and that all Intellectual Property Rights in and to each Developed Material vests in Exelon Business Services Company, LLC on the date such Developed Material is created. In the event and to the extent that, under applicable law, all IP Rights do not automatically vest in Exelon Business Services Company, LLC, Contractor (on its own behalf as well as on behalf of its current and future employees, agents and subcontractors) hereby irrevocably transfers, conveys and assigns in perpetuity to Exelon (including its successors and assigns) any and all present and future IP Rights that it or such persons may have in or to any
Developed Material. Contractor (on its own behalf as well as on behalf of its current and future employees, agents and subcontractors) irrevocably waives all claims to IP Rights in and to all Developed Material.

(c) Contractor shall (and shall require its employees, agents and subcontractors to) execute applications, assignments and other documents and to render all other reasonable assistance requested by Exelon, at Exelon’s expense, to enable Exelon to obtain, register and enforce domestic and foreign patents, copyrights, trademarks and other IP Rights with respect to the Developed Material. Notwithstanding the foregoing, Contractor (on its own behalf as well as on behalf of its current and future employees, agents and subcontractors) hereby irrevocably appoints Exelon as attorney in fact (coupled with an interest) to execute any such instruments. The foregoing powers of attorney and the obligations to assist and execute shall survive termination of these Terms and Conditions for any reason.

12.3 Contractor Material.

Exelon’s ownership of Developed Material that incorporates any pre-existing Material of Contractor created outside of these Terms and Conditions (“Contractor Material”) will be subject to Contractor’s ownership of such Contractor Material. Unless otherwise agreed under a separate written license agreement executed by the Parties, Contractor hereby grants Exelon (and its designees) a non-exclusive, royalty-free, perpetual, irrevocable, transferable, fully paid-up, world-wide license to make, have made, use, copy, display, operate, maintain, support, modify, enhance, prepare derivative works of, sublicense and distribute such Contractor Material as well as any other proprietary Material of Contractor that is reasonably required to enable Exelon to use and support the Developed Material in a cost effective manner (whether or not such proprietary Material of Contractor is incorporated into the Developed Material). Contractor shall obtain Exelon’s written approval prior to incorporating any Contractor Material into any Developed Material and identify such Contractor Material to Exelon.

12.4 Third-Party Material.

In performing the Services, Contractor shall not use or disclose, in any manner, any proprietary Material of any third-party (“Third-Party Material”) unless it has a license to do so and without Exelon’s prior written approval. Unless otherwise agreed in writing by the Parties, in the event Contractor incorporates any Third-Party Material into any Developed Material, or Contractor uses any Third-Party Material in performing the Services which is not commercially available as a product offering of the third-party and is reasonably required to enable Exelon to use and support the Developed Material in a cost effective manner (whether or not such proprietary Third-Party Material is incorporated into the Developed Material), Contractor shall immediately secure for Exelon from the third-party that owns the Third-Party Material a non-exclusive, royalty-free, perpetual, irrevocable, transferable, fully paid-up, world-wide license to make, have made, use, copy, display, operate, maintain, support, modify, enhance, prepare derivative works of, sublicense and distribute such Third-Party Material.

12.5 Open Source or Copyleft Licenses.

Without Exelon’s prior written approval, Contractor will not use in performing the Services, and the Developed Material 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 any Developed Material or to limit Exelon’s right to use, copy, maintain, modify, prepare derivative works of, sublicense, and distribute such software and other intellectual property in any respect.

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12.6 No Implied Licenses.

Except as expressly set forth in these Terms and Conditions, no license to Contractor (or any of its employees, agents or subcontractors) under any Intellectual Property Right that is now or may hereafter be owned by Exelon is granted by these Terms and Conditions.

12.7 Residual Knowledge and Independent Development.

Nothing contained in these Terms and Conditions shall restrict a Party from the use of any general ideas, concepts, know-how, or techniques retained in the unaided mental impressions of such Party’s personnel relating to the Services that either Party, individually or jointly, develops or discloses under these Terms and Conditions, provided that in doing so each Party does not breach its obligations under Section 10.3 or infringe the Intellectual Property Rights of the other Party or third-parties who have licensed or provided materials to the other Party.

13. TERMINATION

13.1 Termination Rights.

(a) Exelon shall have the right, upon written notice to Contractor, to terminate these Terms and Conditions and/or any Task Orders for any reason at any time and without liability.

(b) Contractor may terminate these Terms and Conditions and any Task Orders entered into pursuant to these Terms and Conditions only if Exelon does not pay material undisputed charges when due and fails to cure such default within thirty (30) days after written notice from Contractor.

13.2 Effect on Task Orders.

(a) The termination of any particular Task Order shall not affect the Parties’ respective duties and obligations under any other Task Orders then in effect.

(b) The expiration or termination of these Terms and Conditions shall not terminate or affect Task Orders in effect on such expiration or termination. The Services performed under such Task Orders will be performed until completed as provided in such Task Orders or until the Task Orders are terminated in accordance with Sections 3.1(i) or 13.1, in each case subject to the terms of these Terms and Conditions, which will remain in effect for such Task Orders until such expiration or termination.

13.3 Termination Assistance.

(a) In connection with the expiration or termination of these Terms and Conditions or any Task Order, Contractor shall provide to Exelon, or, at Exelon’s request, to Exelon’s designee, all reasonable assistance requested by Exelon to facilitate the transfer of the affected Services to Exelon or its designee.

(b) Upon the expiration or termination of these Terms and Conditions, Contractor shall deliver to Exelon all work in progress and other Developed Material, including source and object code and related documentation in Contractor’s possession, in a format specified by Exelon.

14. INSURANCE

14.1 Required Coverages.

Contractor shall provide and maintain, and shall require each Subcontractor (regardless of tier) to provide and maintain, in effect during the performance of any Work under the Task Order minimum insurance coverage with carriers authorized to conduct business in the State in which the Work is to be done and otherwise satisfactory to Exelon, including:

(a) Workers Compensation insurance with statutory limits, as required by the state in which the Work is to be performed.
(b) Employer’s liability insurance with limits of not less than one million dollars ($1,000,000.00) each accident for bodily injury by accident, one million dollars ($1,000,000) each employee for bodily injury by disease, and one million dollars ($1,000,000) policy limit.

(c) Commercial general liability (CGL) insurance (with coverage consistent with ISO Form CG 00 01 12 07 or its equivalent with a limit of not less than one million dollars ($1,000,000.00) per occurrence and per project or per location aggregate, covering liability for bodily injury and property damage, arising from premises, operations, independent contractors, personal injury/advertising injury, and products/completed operations for not less than three (3) years from the date Exelon accepts the Work. CGL insurance includes coverage for claims against Exelon for injuries to Contractor Personnel.

(d) Automobile liability insurance coverage (including coverage for claims against Exelon for injuries to Contractor Personnel) for owned, non-owned, and hired autos with a limit of not less than two million dollars ($2,000,000.00) per accident.

(e) Excess or Umbrella liability insurance coverage (including coverage for claims against Exelon for injuries to Contractor Personnel) with a limit of not less than four million dollars ($4,000,000.00) per occurrence and per project or per location aggregate. These limits apply in excess of each of the above mentioned policies. Excess coverage shall be follow form.

(f) The liability limits under 14.1(a), 14.1(c) and 14.1(d) may be met with any combination of primary and Excess or Umbrella Insurance policy limits totaling five million dollars ($5,000,000).

(g) If the Task Order involves or includes Contractor providing or performing design, engineering, consulting, or any professional service, professional liability insurance with a combined single limit of not less than three million dollars ($3,000,000.00) per occurrence.

(h) If any policy is written on a claims made basis, the retroactive date may not be advanced beyond the date of these Terms and Conditions and coverage shall be maintained in full force and effect for three (3) years after termination of these Terms and Conditions, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

(i) Contractor shall be responsible for any deductibles or self-insured retentions applicable to the insurance provided in compliance with Article 14.

(j) Insurance coverage provided by Contractor under this Article 14 shall not include any endorsement limiting coverage available to Exelon which is otherwise required by this Article 14.

(k) To the extent permitted by applicable Laws, all above-mentioned insurance policies shall provide the following:

(i) Be primary and non-contributory to any other insurance carried by Exelon;

(ii) Contain cross-liability coverage as provided under standard ISO Forms’ separation of insureds clause;

(iii) Provide for a waiver of all rights of subrogation which Contractor’s insurance carrier might exercise against Exelon; and

(iv) Any Excess or Umbrella liability coverage will not require contribution before it will apply.

14.2 Additional Coverages.

Exelon reserves the right to require Contractor to provide and maintain additional coverages in the event that the particular Work involves unusual risks or a change in the characteristics of the risks subject to these Terms and Conditions.
14.3 Additional Insured Endorsement.

All liability insurance policies (except professional liability) shall name Exelon and its Affiliates and their officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns, as additional insureds, shall be primary to any other insurance carried by Exelon, and shall provide coverage consistent with ISO Form CG 2026 (11/85), or the combination of ISO Form CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, and shall maintain the required coverages (including but not limited to coverage for claims against Exelon for injuries to Contractor Personnel), for a period of not less than three (3) years from the date Exelon accepts the Work.

14.4 Evidence of Insurance.

Contractor shall provide evidence of the required insurance coverage and file with Exelon a Certificate of Insurance acceptable to Exelon prior to commencement of the Work. The insurance and the insurance policies required by this Article 14 shall contain a provision that coverages afforded under the policies will not be canceled, allowed to expire or the limits in any manner reduced until at least thirty (30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to Exelon. The Certificate of Insurance must state whether or not the Contractor’s commercial general liability policy and/or excess liability policy contain any exclusions. Exelon may inspect any or all policies of insurance at any time.

14.5 Waiver of Subrogation.

Contractor shall waive all rights of subrogation against Exelon under those policies procured in accordance with these Terms and Conditions.

14.6 Ratings.

All insurance coverage shall be provided by insurance companies acceptable to Exelon and having ratings of A-/VII or better in the Best’s Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificate of Insurance referred to in Section 14.4).

14.7 Breach of Terms and Conditions.

Failure to obtain and maintain the required insurance shall constitute a breach of these Terms and Conditions and Contractor will be liable for any and all costs, liabilities, damages, and penalties (including attorneys’ fees, court, and settlement expenses) resulting to Exelon from such breach, unless a written waiver of the specific insurance requirement is provided to Contractor by Exelon.

14.8 Non-Waiver.

Failure of Contractor to provide insurance as herein required or failure of Exelon to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of this Article 14 shall not be deemed to be a waiver by Exelon of any of the terms and conditions of these Terms and Conditions, nor shall they be deemed to be a waiver of the obligation of Contractor to defend, indemnify, and hold harmless Exelon Parties as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Contractor and independent of the duty to furnish a copy or certificate of such insurance policies.

14.9 Exelon’s Right to Purchase.

In the event of any failure by Contractor to comply with the insurance requirements of these Terms and Conditions, 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 Contractor, purchase such insurance, at Contractor’s expense, provided that Exelon shall have no obligation to do so and if Exelon shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such costs incurred by Exelon shall be promptly reimbursed by Contractor and/or may be withheld from any payment due Contractor.
14.10 Contractor’s Commencement of Work Without Insurance.
Commencement of Work without the required Certificates of Insurance, or without compliance with any other provision of these Terms and Conditions, shall not constitute a waiver by Exelon of any rights under these Terms and Conditions.

14.11 Contractor Obligations Not Limited.
None of the requirements contained herein as to types, limits, or Exelon’s approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Contractor under these Terms and Conditions, any other agreement with Exelon, or otherwise provided by law.

15. FORCE MAJEURE
Neither Party shall be liable for any default or delay in the performance of its obligations under these Terms and Conditions:

(a) if and to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God, riots, terrorism, civil disorders, rebellions or revolutions in any country, or any other similar cause beyond the reasonable control of such Party; and

(b) provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, work-around plans or other means.

The affected Party will promptly notify the other Party of the circumstances causing its delay or failure to perform and of its plans and efforts to implement a work-around solution. For as long as such circumstances prevail, the Party whose performance is delayed or hindered will continue to use all commercially reasonable efforts to recommence performance without delay. Contractor shall not have the right to any additional payments from Exelon for costs or expenses incurred by Contractor as a result of any force majeure occurrence.

16. INDEMNITIES
16.1 By Contractor.
Contractor will release and hold ss Exelon and their respective officers, directors, employees, agents, representatives, successors, and assigns (collectively, “Exelon Parties”), harmless from and defend and indemnify the Exelon Parties against any and all Losses and threatened Losses arising from, in connection with, or based on allegations of, any of the following:

(a) any claim that an use of material provided by Contractor or Developed Material infringes any Intellectual Property Right;

(b) any third-party claim resulting from the acts or omissions of Contractor;

(c) any breach of any representation, warranty (including warranties of non-infringement in Section 11.2) or covenant, including any Losses arising from or in connection with any third-party claim to the extent such claim is based on allegations that, if true, would constitute a breach of any such representation, warranty or covenant;

(d) any claims arising out of or related to Contractor’s breach;

(e) any claim asserted against Exelon alleging that Exelon is an employer, co-employer or joint employer of any Contractor personnel; and
(f) any claims arising out of or related to Contractor’s improper termination of these Terms and Conditions or Contractor’s abandonment of its work hereunder.

(g) any actual or asserted failure of an Exelon Party to comply with any Law by reason of any act, omission, conduct, negligence or default by Contractor.

(h) any actual or asserted failure of Contractor or any Subcontractor to comply with any Law, including actual or asserted failure of Contractor or any Subcontractor to pay wages, compensation, taxes, duties, or fees or to comply with employee safety orders, safe place, or employment laws.

16.2 Cross-Indemnity.

Each Party shall release and hold harmless the other Party, its Affiliates and their respective officers, directors, employees, agents and representatives, harmless from and defend and indemnify them against 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 10.3 of these Terms and Conditions.

16.3 Infringement Indemnification.

If any Developed Material or any material licensed to Exelon under these Terms and Conditions becomes the subject of any infringement claim or proceeding, Contractor shall, at its sole cost and expense, in addition to indemnifying Exelon as provided in Section 16.1 and to the other rights Exelon may have under these Terms and Conditions, either: (i) obtain the right to continue using such Developed Material or licensed material; or (ii) replace or modify such Developed Material or licensed material in a manner that makes such Developed Material or licensed material non-infringing while not degrading performance, functionality or quality in any material respect.

16.4 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 16.1, 16.2 or 16.3 above 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 these Terms and Conditions 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 indemnitee 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.

17. LIMITATION OF LIABILITY

(a) EXCEPT AS PROVIDED IN SECTION 17(c), TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL 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 17(c) below, each Party’s total liability to the other Party in connection with these Terms and Conditions, whether in contract or in tort, shall be limited to the greater of (i) the total charges paid or payable to Contractor under these Terms and Conditions or (ii) ten million dollars ($10,000,000.00).

(c) The limitations set forth in Sections 17(a) and 17(b) shall not apply with respect to: (i) claims that are the subject of indemnification pursuant to Article 16 and Section 10.6, (ii) damages occasioned by the gross negligence or willful misconduct of a Party, (iii) damages occasioned by the improper or wrongful termination of these Terms and Conditions or any Task Order or abandonment of work by Contractor, (iv) damages occasioned by Contractor’s breach of Section 10.7 (Compliance with Exelon Information Technology Standards); (v) damages occasioned by a Party’s breach of Section 10.3 or Section 11.2, or (vi) damages occasioned by a Party’s violation of the IP Rights of the other Party.

18. DISPUTE RESOLUTION

18.1 Step Negotiations.

The Parties shall attempt in good faith to resolve all disputes under the Contract Documents (“Disputes”) promptly by negotiation as follows. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the individuals who have previously been principally involved in the Dispute shall meet at a mutually acceptable time and place within 10 days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the matter has not been resolved within 30 days from the referral of the Dispute to senior executives, or if no meeting of senior executives has taken place within 15 days after such referral, either Party may initiate such legal action as it deems appropriate. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least 3 days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section 18.1 are confidential and protected from subsequent testimonial disclosures, and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.
18.2 Services to Continue.

In the case of any Dispute, Contractor shall continue to perform the Services pending final determination of the Dispute and Exelon shall continue to make payments to Contractor in accordance with the Terms and Conditions for those portions of the Services completed that are not the subject of Dispute.

18.3 Waiver of Jury Trial.

EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS.

19. GENERAL

19.1 Governing Law.

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

19.2 Jurisdiction.

The Parties consent to venue, and to the non-exclusive jurisdiction of (i) the United States District Court for the Northern District of Illinois, or (ii) if such court does not have jurisdiction, to the courts of the State of Illinois located in Chicago, for all litigation which may be brought with respect to the terms of, and the transactions and relationships contemplated by, these Terms and Conditions. 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.

19.3 Compliance with Laws and Regulations.

Compliance with Laws and regulations shall be adhered to in accordance with the terms hereof and in compliance with the requirements set out in Section 6.4.

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.

19.4 Diversity Supplier Spend.

Exelon is actively committed to supporting Diversity Suppliers as defined in applicable Exelon policies and procedures. In support of Exelon’s commitment, Contractor will make certain required expenditures with Diversity Suppliers as may be set forth in a Task Order or other Contract Document. In such cases, Contractor shall report its expenditures with Diversity Suppliers on a monthly basis unless another period is negotiated by the Parties and set forth in the Task Order. Contractor shall provide this reporting information by completing the “2nd Tier Diversity Reporting Web form” located on Exelon’s Diversity Supplier Website http://www.exeloncorp.com/supply/ecd/tier2_report/tier2_report.shtml. Contractor can obtain a userid 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

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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 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; Maryland/DC Minority Supplier Development Council; Maryland Department of Transportation; City of Baltimore, Maryland; Anne Arundel County, Maryland. Recognition for certifications held by any other Diversity Supplier accreditation organization must be submitted to Exelon’s Diversity Manager for approval.

19.5 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 these Terms and Conditions with respect to any subsequent or other default.

19.6 Remedies Cumulative.

All remedies specified in these Terms and Conditions will be cumulative and in addition to any other remedies available under these Terms and Conditions or at law or in equity.

19.7 Publicity.

With the sole exception of publication of such information within Contractor’s corporate entity and subject to the Confidentiality provisions of these Terms and Conditions, Contractor shall not refer to Exelon or any company affiliated with Exelon in any advertising or other publication in connection with Work performed by Contractor, without the prior written approval of Exelon. Contractor shall not, either directly or indirectly, publish or disclose any photographs, images, logos, copyrighted or trademark protected information of Exelon, Affiliates or their subsidiaries; or use such Information for the benefit of itself or any other person without the prior written consent of Exelon.

19.8 Assignment.

Subject to the provisions of these Terms and Conditions, Contractor shall not assign its interest (including any interest in or claim to monies owed) in these Terms and Conditions or a Task Order, or delegate any obligation under these Terms and Conditions or a Task Order, without the prior written consent of Exelon. An assignment shall include any transfer of a majority interest in Contractor by merger or otherwise. Any attempted assignment or delegation by Contractor shall be wholly void and totally ineffective for all purposes. No assignment or delegation made by Contractor with the consent of Exelon shall relieve Contractor of any of its obligations under these Terms and Conditions. Exelon reserves the right, without the consent of Contractor, to assign these Terms and Conditions or any Task Order, in whole or in part, to a third-party to be selected by Exelon.

19.9 Notices.

All notices, requests and demands, other than routine communications under these Terms and Conditions, 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 19.9), 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 Contractor:
[To be completed]

In the case of Exelon:
Exelon Business Services Company, LLC
10 South Dearborn
Chicago, Illinois  60603
Attn:  

With a copy to:
Exelon Business Services Company, LLC
10 South Dearborn Street – 54th Floor
Chicago, Illinois  60603
Attn:  General Counsel

Either Party may from time to time change the individual(s) to receive notices under this Section 19.9 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.

19.10 Interpretation.

(a)  Unless the context otherwise requires, words importing the singular include the plural and vice-versa, and words importing gender include all genders.

(b)  References to articles and sections shall be references to articles and sections of these Terms and Conditions, unless otherwise specifically stated.

(c)  The section headings in these Terms and Conditions are intended to be for reference purposes only and shall in no way be construed to modify or restrict any of the terms or provisions of these Terms and Conditions.

19.11 Counterparts.

The Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same agreement.

19.12 Severability.

If any provision of these Terms and Conditions is held invalid by a court with jurisdiction over the Parties to these Terms and Conditions, 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 these Terms and Conditions will remain in full force and effect.

19.13 No Third-Party Beneficiaries.

The Agreement is entered into solely between Exelon and Contractor and, except for the Parties’ indemnification obligations under Article 16, will not be deemed to create any rights in any third-Parties or to create any obligations of either Exelon or Contractor to any third-parties.

19.14 Survival.

Any provision of these Terms and Conditions which contemplates performance subsequent to any termination or expiration of these Terms and Conditions will survive any termination or expiration of these Terms and Conditions and continue in full force and effect.  The terms of these Terms and Conditions shall survive with respect to any Services being performed pursuant to Task Orders that
continue in effect after the expiration or termination of these Terms and Conditions as provided in Section 13.2(b). Further, all perpetual licenses granted under these Terms and Conditions shall survive the termination of these Terms and Conditions for any reason.

19.15 Entire Agreement; Entering Into Task Orders; Amendments.

This Agreement (including any Exhibits referred to herein and attached hereto and Task Orders executed by the Parties in accordance herewith) 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 these Terms and Conditions. To become effective, a Task Order must be signed by an authorized representative of each Party. Modification or amendment of these Terms and Conditions or any Task Order, or any part of these Terms and Conditions or Task Order, 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 enter into Task Orders or to make modifications or amendments to these Terms and Conditions, any Exhibits or any Task Orders.
IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to sign these Terms and Conditions effective as of the Effective Date.

Exelon Business Services Company, LLC

By: ______________________________

_________________________________

(Type or print name)

Title: ____________________________

[Insert Name of Contractor]

By: ______________________________

_________________________________

(Type or print name)

Title: ____________________________
EXHIBIT A

Form of Task Order for Project Work

Task Order No. ___
Task Order Effective Date: _________

This Task Order No. ___, together with the Master Terms and Conditions for the Purchase of Information Technology Services between _______ (“Contractor”) and Exelon, dated ____ (the “Terms and Conditions”), governs the performance of the Project Work described herein. This Task Order shall be effective as of the date set forth above (the “Task Order Effective Date”). All capitalized terms not defined herein will have the meanings given them in the Terms and Conditions.

1. PROJECT OVERVIEW

[Insert an overview of the Project]

2. TERM

The term of this Task Order will commence on the Task Order Effective Date and, unless earlier terminated pursuant to the terms and conditions of the Terms and Conditions, will continue to remain in full force and effect until all Services to be performed, and the Deliverables to be provided, under this Task Order have been successfully completed and delivered.

3. SERVICES

Contractor will perform the tasks and responsibilities described below (including the provision of all Deliverables), and all associated Contractor obligations set forth in the Terms and Conditions, as such tasks, responsibilities and obligations are enhanced, supplemented or changed during the term of this Task Order pursuant to the Terms and Conditions (collectively, the “Services”).

[Insert description of Services to be performed]

4. DELIVERABLES

[List the Deliverables to be provided/achieved, and identify requirements and specifications for each Deliverable.

5. ESTIMATE

Contractor’s charges under this Task Order shall be determined with reference to the Estimate attached hereto as Attachment No. 1.

[Attach Exelon-approved Estimate as Attachment No. 1.]

6. SCHEDULE

[Specify schedule for performing the Services]

7. MILESTONES

[List Milestones. Specifically identify any Milestones that trigger interim payments as “Payment Milestones.”]

8. ACCEPTANCE CRITERIA/TESTING

[Specify the Deliverables subject to acceptance testing and their respective acceptance criteria, as well as, to the extent practicable, the acceptance tests and procedures to be employed]

9. PROJECT MANAGER

[Insert the name, position and contact information of the Contractor project manager]
10. CONTRACTOR PERSONNEL

The following Contractor Personnel will be assigned to perform the Services in this Task Order.

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[List Contractor Personnel by name, position and role of Contractor Personnel]

11. EXELON RESPONSIBILITIES

[List Exelon’s specific responsibilities relating to Contractor’s performance of the Services under this Task Order]

12. OTHER PROVISIONS

[Insert any additional terms agreed to by the Parties.]

The terms of this Task Order are agreed to by:

Exelon Business Services Company, LLC  Contractor

By: ____________________________  By: ____________________________

Name: __________________________  Name: __________________________

Title: __________________________  Title: __________________________

Date: __________________________  Date: __________________________
## EXHIBIT B

### Key Contractor Positions

<table>
<thead>
<tr>
<th>Key Contractor Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
### EXHIBIT C

**Personnel Rates/Discounts**

<table>
<thead>
<tr>
<th>Labor Category</th>
<th>Years of Experience</th>
<th>Description</th>
<th>Daily Rate</th>
<th>Volume Discount Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$&gt;__________&lt; and $&lt;__________&lt;</td>
</tr>
</tbody>
</table>
EXHIBIT D
THIRD PARTY PERSONNEL ACKNOWLEDGEMENT

I _____________________ ("Contractor Personnel"), acknowledge that I am an employee of ________________ ("Contractor"). I acknowledge that my relationship with Exelon Corporation, its affiliates, subsidiaries or any of successor (the “Exelon Entities”) is that of an independent contractor, not an employee of any of the Exelon Entities, and that all services performed by me for one or more of the Exelon Entities is pursuant to an agreement between Exelon and ________________ ("Contractor"), as an employee of Contractor or one if its Subcontractors, as applicable. I also acknowledge that during the period I perform services for or on behalf of the Exelon Entities pursuant to an arrangement with Contractor, I am not entitled to compensation of any kind from Exelon or to participate in any employee benefit plan or program of any kind offered to any employee of the Exelon Entities, and I expressly waive any and all such compensation and benefits. I understand that the preceding sentence will not prohibit me from receiving any earned and vested pension or retiree health care benefits from the Exelon Entities to which I may already be entitled as a former employee of one of the Exelon Entities.

In addition, I represent the following:

1. Check one:   ___ I am not a former employee of one of the Exelon Entities. OR

   ___ I am a former employee of one of the Exelon Entities

2. If I am a former employee of one of the Exelon Entities:

   A. My Exelon Employee ID number (if available) was: ______________

   B. Check one: ___ I am not eligible to receive (and am not currently receiving) a benefit under an Exelon pension plan. OR ___ I am eligible to receive benefits under an Exelon pension plan.

3. I am not currently employed by Exelon and will not accept employment with Exelon that commences during the period I am employed by Contractor.

4. If (a) I am an Exelon Retiree, I have not and will not provide any services on Exelon matters, or (b) I am not an Exelon Retiree, I have not provided, and will not provide, services designated by Exelon as “Staff Augmentation” services on Exelon matters, regardless of whether such services were provided by me as an employee of Contractor or any other third party employer or regardless of hours worked,

for a total period in excess of one year, unless Exelon has granted me a written exception to such one-year period prior to reaching the one year aggregate period.

CONTRACTOR PERSONNEL
Signed: ______________________________
Print Name: __________________________
Date: __________________________________

Note: An executed acknowledgement shall be provided to Contractor named above.
EXHIBIT E
EXELON AFFILIATES*

Baltimore Gas and Electric Company (“BGE”)
Calvert Cliffs Nuclear Power Plant, LLC (“CCNPP”)
Commonwealth Edison Company
Constellation Energy Nuclear Group, LLC (“CENG”)
Constellation Energy Resources, LLC and its subsidiaries
Constellation Energy Resources (“CER”) – Quail Run Energy Partners LP
  CER – Colorado Bend Energy Partners LP
  Constellation Mystic Power, LLC
Constellation NewEnergy, Inc. and its subsidiaries (“CNE”)
CNEGH Holdings, LLC and its subsidiaries (“CNEGH”)
Constellation Power Source Generation, Inc. and its subsidiaries (“CPSGI”)
  Criterion Power Partners, LLC
  Exelon Corporation
  Exelon Business Services Company, LLC
  Exelon Generation Company, LLC and its subsidiaries
    Exelon Transmission Company, LLC
    Exelon Wind, LLC
  Exelon Enterprises Company, LLC (and its subsidiaries)
    Handsome Lake Energy, LLC
    MXenergy Holdings, Inc. and its subsidiaries
  Nine Mile Point Nuclear Station, LLC (“NMPNS”)
  PECO Energy Company
  R.E. Ginna Nuclear Power Plant, LLC (“REGNPP”)

* Including their subsidiaries.
EXHIBIT F

EXELON AND AFFILIATE POLICIES AND PROCEDURES

Contractor shall comply with, and ensure Contractor Personnel familiarized themselves and comply with, the following policies and procedures applicable to Exelon and its Affiliates as indicated below, in addition to such other Exelon Policies and Procedures as set out in the Contract Documents. THE FAILURE OF EXELON TO LIST ANY POLICIES AND PROCEDURES APPLICABLE TO THE PERFORMANCE OF THE WORK OR CONTRACTOR’S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS IN THIS EXHIBIT SHALL NOT EXCUSE CONTRACTOR FROM ITS OBLIGATIONS UNDER ARTICLE 6 OF THESE TERMS AND CONDITIONS.

Exelon and All Affiliates (except for CENG, CCNPP, NMPNS, and REGNPP)

- Exelon Code of Business Conduct (available at http://media.corporate-ir.net/media_files/irol/12/124298/corpgov/exc_codebusconduct_061013.pdf, or in booklet form upon request.)
- Exelon’s Use of Contractor Policy (HR AC 70)
- Exelon Drug & Alcohol Policy (HR-AC-16)
- Exelon Non-Discrimination Harassment Free Work Environment Policy (HR-AC-15)
- Exelon Acceptable Use of Electronic Information Assets Policy (IT-AC-550-1)
- Exelon Diversity Suppliers Procedure (SM-AC-4001)

BGE – Only

- BGE Safety Conditions of Contract

CENG, CCNPP, NMPNS, REGNPP – Only

- CENG Industrial Safety Manual
- CENG Fleet Administrative Procedure, “Corrective Action Program,” CNG-CA-1.01-1000
- CENG Fleet Administrative Procedure, “Physical Examination Process for Employees and Contractors,” CNG-MD-1.01-3000
- CENG Fleet Administrative Procedure, “Human Performance,” CNG-HU-1.01-1000
- CENG Fleet Administrative Procedure, “Human Performance, Tools and Verification Practices” CNG-HU-1.01-1001
- CENG Fleet Administrative Procedure, “Pre-Job Briefings and Post-Job Critiques,” CNG-HU-1.01-1002
- CENG Fleet Administrative Procedure, “Human Performance Tools for Non-Field Technical Activities” CNG-HU-1.01-1003
- CENG Fleet Administrative Procedure, “Foreign Material Exclusion,” CNG-MN-1.01-1001
• CENG Fleet Administrative Procedure, “Load Handling,” CNG-MN-1.01-1003

• CENG Fleet Administrative Procedure, “Oversight of Supplemental Personnel,” CNG-MN-1.01-1006

• CENG Fleet Administrative Procedure, “Safety Conscious Work Environment and Employee Concerns Program, CNG-QL-3.01-1001

• CENG Fleet Guideline, “Extra, Deletion and Delay (“EDD”) Process,” CNG-SC-1.01-GL006

• CENG Fleet Administrative Procedure, “Access Authorization Program,” CNG-SE-1.01-1000

• CENG Fleet Administrative Procedure, “Nuclear Safety Culture,” CNG-NS-2.01-1000

• CENG Fleet Administrative Procedure, “Fitness for Duty Program,” CNG-SE-1.01-1001

• CENG Fleet Administrative Procedure, “Fatigue Management and Work Hour Controls,” CNG-SE-1.01-1002

• CENG Fleet Guideline, “Use of Cameras and Photographic Equipment, CNG-Se-1.01-GL004

Commonwealth Edison Company and PECO Energy Company - Only

• Contractor Compliance and Management of Contractors (PC-ED-2016)

• Contractor Orientation (PC-ED-2017)