

INFORMATION TECHNOLOGY SERVICES AGREEMENT

Between

[insert name of Exelon entity],

[acting by and through its agent,

Exelon Business Services Company, LLC]

and

Dated as of _____, 200_

TABLE OF CONTENTS

	<u>Page</u>
1. BACKGROUND AND OBJECTIVES	4
2. DEFINITIONS	5
3. SERVICES	5
4. TERM.....	10
5. PERSONNEL.....	10
6. CERTAIN VENDOR RESPONSIBILITIES	12
7. PERFORMANCE	15
8. ACCEPTANCE OF DELIVERABLES AND TESTING.....	20
9. FINANCIAL	22
10. SAFEGUARDING OF DATA, CONFIDENTIALITY AND AUDIT RIGHTS.....	25
11. REPRESENTATIONS AND WARRANTIES	28
12. INTELLECTUAL PROPERTY RIGHTS	30
13. TERMINATION	32
14. INSURANCE.....	32
15. FORCE MAJEURE	34
16. INDEMNITIES	35
17. LIMITATION OF LIABILITY	36
18. DISPUTE RESOLUTION	37
19. GENERAL	38
GLOSSARY	
SCHEDULE A	FORM OF TASK ORDER FOR SUPPLEMENTAL RESOURCES
SCHEDULE B	FORM OF TASK ORDER FOR PROJECT WORK
SCHEDULE C	KEY VENDOR POSITIONS

SCHEDULE D PERSONNEL RATES/DISCOUNTS

SCHEDULE E INVOICE FORMAT

SERVICES AGREEMENT

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

1. BACKGROUND AND OBJECTIVES

1.1 Background.

This Agreement is being made and entered into with reference to the following:

(a) Exelon desires to enter into an agreement with Vendor, on a non-exclusive basis, that establishes a contractual framework for Exelon to purchase from Vendor a wide range of information technology ("IT") services.

(b) Vendor is in the business of providing a broad range of IT services and desires to be a provider of Services. Vendor has represented that it has the skills, qualifications and experience necessary to perform and manage such Services in an efficient, cost-effective and controlled manner, with a high degree of quality and responsiveness, and that it has performed similar services for other customers.

(c) Exelon has selected Vendor as a non-exclusive vendor to provide Services. This Agreement documents the terms and conditions under which Exelon agrees to purchase, and Vendor agrees to provide, such Services.

1.2 Objectives.

Exelon and Vendor have agreed, as specific goals and objectives for this Agreement, to the following:

(a) Services that are scalable and responsive to the changing needs and requirements of Exelon, and are performed at the highest levels of quality.

(b) A high level of coordination among Vendor, Exelon and other vendors providing services to Exelon.

1.3 Construction.

The provisions of this Article 1 are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties' obligations under this Agreement or to alter the plain meaning of the terms and conditions of this Agreement. However, to the extent the terms and conditions of this Agreement are unclear or ambiguous, such terms and conditions are to be interpreted and construed so as to give effect to the provisions in this Article 1.

2. DEFINITIONS

2.1 Glossary.

Certain terms used in this Agreement are defined in the Glossary attached hereto.

2.2 Other Terms.

(a) Other terms used in this Agreement are defined where they are used and have the meanings there indicated.

(b) Those terms, acronyms and phrases utilized in the IT services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

3. SERVICES

3.1 Overview.

(a) The Services will fall into one of two categories at Exelon's election:

(i) provision of personnel to supplement resources of Exelon and other parties in performing work managed by Exelon or third-parties ("Supplemental Resources," as more particularly described in Section 3.3); and

(ii) work performed by Vendor as a Project for which Vendor will have accountability for specific Deliverables ("Project Work," as more particularly described in Section 3.4).

(b) The Services to be provided by Vendor under this Agreement shall be as specified in task orders ("Task Orders") to be entered into by the Parties substantially in the form attached hereto as **Schedule A** for Supplemental Resources and substantially in the form attached hereto as **Schedule B** for Project Work. This Agreement shall be implemented through one (1) or more separate Task Orders entered into from time to time by Exelon and Vendor. This Agreement provides basic terms and conditions applicable to all such Task Orders.

(c) Vendor is a non-exclusive provider of Services. Vendor acknowledges and agrees that services may be performed by Exelon, Vendor and other service providers selected by Exelon, and that the Task Orders performed by Vendor may account for only a portion of such services. Notwithstanding the fact that Exelon or other service providers may perform services relating to the Services, Vendor will remain accountable for the quality, performance and timely completion of the Services performed by Vendor and its subcontractors.

(d) Absent the execution of a Task Order, this Agreement does not, in and of itself, represent a commitment by Exelon to receive any Services from Vendor or pay Vendor any fees.

3.2 Task Orders.

(a) Task Orders will include the types of information set forth in **Schedule A** for Supplemental Resources and in **Schedule B** for Project Work. Vendor will prepare and deliver the Deliverables and perform the Services in accordance with the Task Orders.

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

3.3 Supplemental Resources.

The process outlined below will be used to establish the cost, time frames and performance requirements for Vendor's provision of Supplemental Resources:

(a) Initiation. Exelon will initiate a request for Supplemental Resources by submitting to Vendor a high level description of the Services to be performed by Vendor personnel, the required skill set/experience level, the required number of personnel or full time equivalents ("FTEs") and the expected start and end dates for Vendor personnel.

(b) Selection of Vendor Personnel. Within five (5) business days after Exelon submits its request for Supplemental Resources (or such longer period as may be specified by Exelon), Vendor shall provide Exelon with a list of qualified Vendor Personnel that it proposes to provide to Exelon, together with a resume for each individual and any other information reasonably requested by Exelon. The candidates proposed by Vendor must meet the requirements specified by Exelon in its request. Exelon will have the right to interview each candidate. Exelon will accept or reject each candidate within a reasonable time period and will state the reasons for rejecting any candidate. If Exelon rejects a candidate, Vendor will promptly propose a new qualified candidate for Exelon's consideration. Upon acceptance of one (1) or more candidates, the Parties will complete a Task Order described in **Schedule A** under which Vendor will make such candidates available to Exelon and provide the Services described therein.

(c) Charges. Supplemental Resources shall be charged on a time and materials basis at the Personnel Rates. Volume discounts as described in Section 9.1(b) will be used in determining the applicable Personnel Rates. Exelon shall not be charged for substandard work. Vendor shall invoice Exelon for Supplemental Resources on a monthly basis.

(d) Termination of Supplemental Resources. Exelon may terminate any Task Order for Supplemental Resources, or the services of individual Supplemental Resources under any Task Order, at any time without liability other than payment for Services properly rendered under such Task Order, and reimbursable expenses incurred, through the effective date of termination. At Exelon's request, Vendor will deliver to Exelon all Developed Material (including work in progress) of the individual whose services have been discontinued.

3.4 Project Work.

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 Vendor a high level description of the requirements for the Project. Vendor will promptly review the requirements and, with any additional input reasonably required from Exelon, prepare a firm estimate of Vendor's charges and time to complete the Project (a "Project Estimate"). Each Project Estimate will consist of:

- (i) Vendor's total labor charges to complete the Project Work (including correction of any deficiencies or Defects identified during acceptance and performance testing), with a break down 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, Vendor 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, Vendor 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, Vendor 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 Vendor 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 Vendor 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 **Schedule B**. Vendor 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, Vendor 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 Vendor's estimated cost of performing the Project Work, or to materially increase or decrease the time period within which Vendor will complete the Project Work, Vendor 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 Vendor prior to such execution of the modification will be at Vendor's risk and cost. Upon execution of the modification, the work described therein shall be deemed Services for all purposes under this Agreement.

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

- (i) Vendor 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 Vendor'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. Vendor's charges for the Project Work will equal:

- (i) the lesser of (A) the actual number of Person Days that Vendor 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) Vendor'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 3.4(e) above; plus
- (ii) incidental expenses to the extent reimbursable under Section 9.2.

(h) Invoicing.

- (i) Vendor shall invoice Exelon for a Project upon successful completion of all Project Work, provided that, if there is an Assessment Phase, Vendor 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, Vendor shall invoice Exelon upon successful completion of all Project Work through Milestones that are specified in the Task Order as payment Milestones, provided that Exelon may withhold a retainage equal to thirty percent (30%) of Vendor's charges until all Project Work is successfully completed.
- (ii) Vendor shall utilize software to generate and reproduce invoices in accordance with the terms hereof and in compliance with the requirements set out in Schedule E.

(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 3.4(i)) upon written notice to Vendor. Vendor 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 3.4(j)(ii) below (in which case the applicable remedies set forth

therein shall apply). The total amount charged by Vendor will not exceed Vendor's Project Estimate or Assessment Phase Estimate (as applicable). At Exelon's request, Vendor shall promptly deliver all Developed Material (including work in progress) to Exelon.

(j) Remedies.

(i) Vendor recognizes that time is of the essence 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 Agreement, 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 Vendor under Section 3.4(j)(ii) below.

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

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

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

(C) accept the Deliverables associated with such Milestone in their deficient state and equitably reduce Vendor'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 Vendor under the Task Order (in which case Exelon will have no rights to the Developed Material developed by Vendor under the Task Order).

(iii) The date by which Vendor 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 Vendor (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 Vendor. As used in this Section 3.4(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 3.4(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

The term of this Agreement will commence on the Effective Date and, unless terminated earlier in accordance with this Agreement, shall continue unless and until no new Task Order has been entered into by the Parties for a period of twelve (12) months following the completion or termination of the last Task Order entered into pursuant to this Agreement (the "Term").

5. PERSONNEL

5.1 Engagement Managers.

(a) Vendor Engagement Manager. Vendor will assign an experienced manager (the "Vendor Engagement Manager") who will: (i) oversee and manage the performance of Vendor's obligations under this Agreement (which shall include the responsibility to see that all Milestones are met on-time and that all Deliverables satisfy the requirements of this Agreement); (ii) serve as Exelon's primary point of contact for operational matters pertaining to this Agreement; (iii) have the authority to make binding commitments on behalf of Vendor; 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 Vendor 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 Vendor for all matters pertaining to this Agreement (the "Exelon Engagement Manager"). The Exelon Engagement Manager will be responsible and authorized to accommodate reasonable requests by the Vendor Engagement Manager for Exelon Information, data and support of a type specified in the Task Orders.

5.2 Key Vendor Personnel.

(a) "Key Vendor Positions" shall be the positions set forth as such in **Schedule C**. The Vendor Engagement Manager shall be one of the Key Vendor Positions. If and to the extent specified in a Task Order, Vendor shall cause each of the individuals filling the Key Vendor 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 Vendor Positions are listed in **Schedule C**.

(b) Exelon may from time to time change the positions designated as Key Vendor Positions under this Agreement, provided that without Vendor's consent, the number of Key Vendor Positions shall not exceed the number specified in **Schedule C** as of the Effective Date.

(c) Before assigning an individual to a Key Vendor Position, whether as an initial assignment or a subsequent assignment, Vendor 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, Vendor 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 Vendor 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. Vendor shall establish and maintain an up-to-date succession plan for the individuals serving in Key Vendor Positions.

5.3 Vendor Personnel.

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

(b) Vendor shall not remove or reassign any of Vendor 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. Vendor 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 Vendor Personnel on the Exelon account that Exelon determines not to be in the best interests of Exelon. Subject to the other provisions of this Agreement, Vendor shall promptly replace the Vendor Personnel removed from Exelon's account with replacement Vendor Personnel of equal or superior ability, experience and qualifications. Nothing in this Agreement shall be deemed to give Exelon the right to require Vendor to terminate any individual's employment or contractual relationship with Vendor; it is intended to give Exelon only the right to require that Vendor discontinue using such individual in the performance of Services.

(d) Vacation time for Vendor 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 Vendor nor any of Vendor'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 this Agreement to seek employment or other contractual arrangements with Vendor or any of Vendor'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 this Agreement within six (6) months of the proposed employment or engagement. General advertising for employment made by Vendor 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. Vendor, Vendor personnel and its subcontractors shall comply with all applicable rules, policies, Jobsite requirements, and procedures of Exelon and any of its Affiliates (“Policies and Procedures”), which have been or shall be provided to Vendor and/or posted on a secure website as designated by Exelon. Exelon reserves the right to revise or update the Policies and Procedures from time to time. At the request of Exelon or on at least an annual basis, Vendor shall acknowledge in writing which rules, policies, Jobsite requirements, and procedures of Exelon it has reviewed.

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

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

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

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

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

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

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

6.2 Compliance with Laws.

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

(a) With respect to Vendor Personnel, Vendor shall, to the extent applicable, comply with the federal laws, rules and regulations pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including the following, all of which are incorporated herein by reference: (i) Affirmative Action Compliance Program (41 CFR 60-1.40); (ii) Affirmative Action – Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action – Handicapped Workers (41 CFR 60-741.4); (iv) Equal Opportunity (41 CFR 60-1.4); (v) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vi) Fair Labor Standards Act of 1938, as amended; (vii) Prohibition of Segregated Facilities (41 CFR 60-1.8); (viii) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7) and (ix) union-related posting and contract clause requirements under Executive Order 13201 (29 CFR, part 470). Vendor shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.

(b) In order to protect persons and property from damage, injury, or loss, Vendor shall comply with, and cause its subcontractors to comply with, all applicable domestic and foreign occupational health and safety laws and regulations, including those contained in or issued pursuant to the Occupational Safety and Health Act of 1970 (“OSHA”), as amended, or Exelon's safety requirements (to the extent the same is provided to Vendor in advance), whichever is more stringent, in connection with the provision of Services at Exelon facilities. Vendor shall review and monitor the safety programs of its subcontractors to confirm that such safety programs are consistent with Vendor's overall safety program for the provision of Services at Exelon facilities. Subject to Exelon's specific obligations set forth in this Agreement 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.

Vendor shall promptly notify Exelon, in writing, of any material changes in Vendor's safety program or if Vendor discovers any conflicts between Exelon's and OSHA's safety requirements. Vendor's duties and responsibilities for ensuring safety and protection in connection with the Services shall continue until such time as all the Services are completed. Unless otherwise required by Exelon, Vendor shall not create a safety manual for any Services.

(c) Vendor warrants that it shall fully comply with U.S. Export Regulations including those rules concerning Assistance to Foreign Atomic Energy Activities set forth at 10 CFR Part 810, as amended from time to time, and rules regulating the granting of access to and use of U.S. Department of Energy ("DOE") controlled information provided by Exelon or a U.S. person under the DOE rules.

6.3 Backup and Disaster Recovery.

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

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

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

(c) Develop and maintain a Disaster Recovery Plan approved by Exelon. In the event of a disaster, Vendor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan.

(d) Maintain the ability to provide full "hot-site" recovery for the ASP System in accordance with the Disaster Recovery Plan. A hot-site is a fully-equipped computer center which provides one (1) or more computer models, network connections, and the necessary peripheral equipment to replicate the data processing from the primary computer site, including uninterruptible power supplies, printers, consoles, tape drives, redundant environmental conditioning, fire protection and warning devices, intrusion-detection devices, physical security, and adequate office space for personnel to conduct normal data center operations.

(e) Provide "cold-site" facility in case of extended outage, including some or all of the development environment.

(f) Plan and conduct disaster recovery tests quarterly each year of the term in coordination with Exelon. Vendor shall document results and provide analysis and recommendations for improvements in recovery capabilities.

(g) Generate a report following each and any disaster measuring performance against the Disaster Recovery Plan and identification of problem areas and plans for resolution.

6.4 Subcontractor Compliance

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

6.5 Compliance with Legal Holds

Formatted

6.5.1. Vendor 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 Vendor if a legal hold is placed on records, documents, or data the Vendor controls. Vendor 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 Vendor is uncertain whether specific records, documents, or data is 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.

6.5.2. In the event records, documents, or data placed on legal hold are required for review by Exelon's Legal Department, Vendor will work diligently to export all relevant records, documents, or data in a form that is reasonably reviewable.

7. PERFORMANCE

7.1 General

Vendor, 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. Vendor shall utilize effective project management in performing the Services.

Performance will be measured by a mutually agreed set of Performance Measures specified for each Task Order. In addition, Vendor 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) Vendor 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 Vendor Engagement Manager shall conduct regular review meetings which will be attended by senior representatives from Vendor 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 Vendor.

7.3 Work-in-Progress Reviews.

Periodically, or as reasonably requested by Exelon, Vendor 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 Vendor and its subcontractors. Vendor shall notify Exelon in advance of all such meetings in order to enable Exelon to participate in the same.

7.4 Time of Performance.

Vendor 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 Vendor becomes aware of any circumstance that may jeopardize the delivery of any Deliverable or the completion of any Milestone by the scheduled completion date, Vendor shall promptly notify Exelon. The Parties agree to work together to identify action plans to minimize the delay.

7.5 Use of Subcontractors.

(a) Vendor shall not delegate or subcontract any of its obligations under this Agreement without Exelon's prior written approval. Exelon shall have the right to approve or disapprove the use of proposed subcontractors not identified in this Agreement or a Task Order in its sole discretion. Subcontractors, and their respective functions, if any, 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 Agreement or a Task Order and direct Vendor 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) Vendor shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Vendor's employees and for purposes of this Agreement such work shall be deemed work performed by Vendor. Vendor shall be Exelon's sole point of contact regarding the Services, including with respect to payment.

(d) Vendor 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 Vendor under this Agreement.

(e) Vendor shall ensure that each subcontractor performing any Services under this Agreement shall have executed a written agreement, prior to the performance of any such Services, that will provide Exelon with the same Intellectual Property Rights in all Developed Material created by such subcontractor that Exelon would receive under Article 12 below if Vendor created such Developed Material itself under this Agreement.

7.6 Facilities and Assets.

(a) Exelon Facilities and Assets.

(i) Unless otherwise agreed by the Parties in a Task Order, Vendor Personnel assigned to perform Services shall perform such Services at Exelon facilities. To the extent that Vendor Personnel perform Services at Exelon's facilities, Exelon will provide Vendor 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. Vendor may upgrade such equipment and software as Vendor 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) Vendor shall ensure that Vendor Personnel located at Exelon facilities comply with the Exelon security regulations particular to such facilities as to which Exelon has notified Vendor in advance.

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

(iv) Vendor shall use due care while using any Exelon-owned assets that are provided to Vendor for Vendor's use in performing the Services. If during the term of this Agreement such assets are to be located at Vendor's premises, Vendor must maintain adequate physical security measures so as to prevent unauthorized access to or theft of such assets. Assets provided by Exelon for Vendor'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 Vendor. Upon Exelon's request, the termination or expiration of this Agreement 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 Vendor in order to render the Services hereunder, such assets shall be promptly returned to Exelon by Vendor.

(b) Vendor Facilities.

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

(ii) To the extent that any Services are provided by Vendor Personnel at a Vendor facility, Vendor 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 Vendor Personnel at a Vendor 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 Vendor facility. Exelon reserves the right to approve the location and any relocation of Vendor facilities at which Vendor Personnel perform any Services. Unless otherwise agreed in writing by the Parties, Vendor shall bear all costs and expenses of any relocations and any increased cost to Vendor in providing the Services from Vendor facilities (rather than from Exelon facilities).

7.7 Vendor Methodologies, Tools and Training.

(a) Vendor shall perform the Services using the languages, tools, methodologies and practices selected by Exelon. Vendor 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 Vendor and are used in providing the Services, Vendor hereby grants 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 or any of its Affiliates (collectively, "Exelon Technology").

(c) With respect to any languages, tools, methodologies and practices that Vendor licenses from a third-party and are used in providing the Services, Vendor shall obtain from such third-party on Exelon's behalf a non-exclusive, royalty-free, perpetual, irrevocable, transferable, fully paid-up, world-wide license for Exelon to use such languages, tools, methodologies and practices to 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 Vendor 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 Vendor 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.

(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 sublicensing 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 Vendor 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 Vendor 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 Vendor has met the criteria; and
- (e) the portion, if any, of the bonus pool to be awarded to Vendor Personnel.

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

7.9 Acquisition Discount Programs.

At Exelon's request, Vendor shall make available to Exelon any acquisition discount programs Vendor 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.

7.10 Counterfeit, Fraudulent and Substandard Items

Formatted

Vendor is hereby notified that the delivery of suspect/counterfeit parts is of special concern to Exelon. If any parts or Material covered by this Agreement are described using a manufacturer part number or using a product description and/or specifies an industry standard, Vendor shall be responsible to assure that the replacement parts or Material supplied by Vendor meet all requirements of the latest version of the applicable manufacturer data sheet, description, and/or industry standard. If Vendor is not the manufacturer of the goods, Vendor shall make all reasonable efforts to assure that the replacement parts or Material supplied under this Agreement are made by the Original Equipment Manufacturer (OEM) and meet the applicable manufacturer data sheet or industry standard. Should Vendor desire to supply a replacement part or Material that may not meet the requirements of this paragraph, Vendor shall notify Exelon of any exceptions and receive Exelon's written approval prior to shipment of the replacement parts or Material to Exelon. If suspect/counterfeit parts or Material are furnished under this order or are found in any of the goods delivered hereunder, such items will be dispositioned by Exelon and / or the supplier to Exelon, and may be returned to the Vendor. Vendor shall promptly replace such suspect/counterfeit parts or Material with parts or Material acceptable to Exelon, and Vendor shall be liable for all costs, including but not limited to Exelon's internal and external costs, relating to the removal and replacement of said parts or Material.

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, Vendor will notify Exelon in writing that the Deliverable has been completed and, in the case of Deliverables constituted of software and/or equipment ("Operational Deliverables"), tested and/or certified as being ready for acceptance ("Ready for Acceptance") by Exelon. Promptly after receiving such notice, Exelon will evaluate the Deliverable for acceptance in accordance with this Article 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) Vendor may submit interim drafts of written Deliverables (e.g., system designs and documentation) to Exelon for review. Exelon agrees to review each interim draft within

a reasonable period of time after receiving it from Vendor. When Vendor delivers a final written Deliverable to Exelon, Exelon will have the opportunity to review such written Deliverable for an acceptance period of fifteen (15) days or such other period as is stated in the 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 Vendor in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted in the form delivered by Vendor or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If Vendor does not receive any such notice from Exelon by the end of the Acceptance Period, Vendor shall promptly notify Exelon in writing that no such notice has been received. If Vendor does not receive the required notice within seven (7) days after Exelon receives such written notification from Vendor, such written Deliverable will be deemed to be accepted by Exelon.

(iii) If Exelon delivers to Vendor a timely notice of deficiencies, Vendor will correct the described deficiencies as quickly as possible and, in any event, within ten (10) days after Exelon notifies Vendor of the of deficiencies (unless otherwise specified in the applicable Task Order). Upon receipt of a corrected written Deliverable from Vendor, Exelon will have a reasonable additional period of time to review the corrected written Deliverable.

(b) Operational Deliverables.

(i) To the extent not already specified in the applicable Task Order, prior to the date on which Vendor is scheduled to deliver each Operational Deliverable to Exelon, Vendor and Exelon will agree upon the testing procedures for the Operational Deliverable, including without limitation detailed test cases and expected results (the "Acceptance Tests"). The Acceptance Tests will be designed to determine whether the Operational Deliverable contains any Defects. Exelon will have the opportunity during the Acceptance Period to evaluate and test each Operational Deliverable in accordance with the following procedures by executing the Acceptance Tests.

(ii) When Vendor has completed an Operational Deliverable, Vendor will deliver the Operational Deliverable to Exelon's designated site and, where Vendor 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. Vendor shall notify Exelon when the Operational Deliverable is Ready for acceptance, provided that such notice shall not occur prior to the successful completion by Vendor of any installation tests. Such notice will start the "Acceptance Period," which will be thirty (30) days or such other period as is stated in the 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 Vendor in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted in the form delivered by Vendor or describing the Defects as provided in Section 8.2(b)(iv) below. If Vendor does not receive any notice of Defects from Exelon by the end of the Acceptance Period, Vendor shall promptly notify Exelon in writing that no such notice was received. If Vendor does not receive a notice of Defects within seven (7) days after Exelon receives such written notification from Vendor, such Operational Deliverable will be deemed accepted by Exelon.

(iv) If Exelon determines during the Acceptance Period that the Operational Deliverable as delivered by Vendor deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (a "Defect"), Exelon will inform Vendor in writing, describing the Defect(s) in sufficient detail to allow Vendor to recreate them. Vendor will correct any Defects in a Operational Deliverable as quickly as possible after receiving Exelon's notice of the Defects and, in any event, within ten (10) days after receiving such notice (unless otherwise specified in the 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. Vendor will correct any further Defects identified by Exelon during the re-test as quickly as possible, but in no event more than ten (10) days after Exelon notifies Vendor of the further Defects, unless otherwise specified in the applicable Task Order or agreed to by Exelon.

9. FINANCIAL

9.1 Personnel Rates.

(a) Rates. Vendor's Personnel Rates for performing Project Work and providing Supplemental Resources shall be as set forth in **Schedule D** attached hereto.

(b) Volume Discounts. Discounts to the Personnel Rates based on higher levels of overall usage of Vendor Personnel are set forth in **Schedule D**. Such discounts shall apply based on the overall usage of Vendor Personnel as measured in terms of the aggregate total dollar amount of Vendor's labor charges under this Agreement 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 **Schedule D** are fully loaded rates that include: all equipment, software, computer time, supplies and office space required or used by Vendor Personnel in performing the Services to the extent such Services are performed at a Vendor facility pursuant to Section 7.6(b) above; the travel, lodging and meal expenses of Vendor 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. There will be no overtime charge. Vendor will not charge Exelon for more than eight (8) hours in a day or five (5) days in a calendar week, regardless of the number of hours or days actually worked. Exelon-specific work does not include travel, sick leave, vacation, training and administrative functions.

(e) Timekeeping. Vendor must record time devoted to Exelon work in Vendor's time keeping system. Vendor shall cause all Vendor 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 Vendor for reasonable, documented travel, lodging and meal expenses of Vendor personnel engaged in performing Services under this Agreement only if such expenses are incurred in response to a special request by Exelon in writing. In the event such request by Exelon is due to a problem with the Services attributable to Vendor, there will be no such reimbursement. Any authorized travel-related expenses will be reimbursable in accordance with Exelon's policies that apply to its own personnel. Except as provided above, all of Vendor's expenses incurred in performing the Services are included in the Personnel Rates.

9.3 Taxes.

(a) Except for state sales or use taxes that apply to this purchase, Vendor's price is inclusive of any and all taxes, fees, excises, and charges which are now or hereafter imposed by any governmental authority with respect to the prices and payment for the Material or the Services, and Exelon shall not be required or obligated to reimburse Vendor for any taxes or similar expenses which may arise or be incurred in connection with delivery of the Material or performance of the Services. The invoice shall separately list taxable and nontaxable charges where applicable. Unless Exelon provides Vendor an exemption certificate or notifies Vendor that Exelon will pay such taxes directly to the applicable Department of Revenue, then state sales and use tax, where applicable, shall be billed on the invoice if Vendor is authorized by applicable Law to collect such tax. To the extent Vendor fails to bill Exelon pursuant to this Section 9.3, then Vendor shall be responsible for all penalties and interest payments associated with such failure (whether assessed to Exelon or Vendor) and the payment of such tax. Exelon shall reimburse Vendor for any interest, penalties, or expenses Vendor may incur as a result of Exelon providing Vendor with an exemption certificate. Vendor will promptly furnish Exelon with all information Exelon requests for the purpose of determining the amount of any tax liability under this Agreement. Notwithstanding the foregoing, Vendor shall pay sales and use taxes on the purchase of all Material unless specific evidence of exemption from such

tax is provided by Exelon. At the request of Exelon, Vendor shall prepare, execute, and deliver to Exelon a Federal Form W-9 or the equivalent thereof. Vendor shall comply with the reporting requirements of all governmental authorities, and, upon the request of Exelon, will provide proof that Vendor has complied with such reporting requirements.

Deleted: ¶

9.4 Invoicing.

Vendor shall render in arrears a single consolidated invoice each month for the charges covered by such invoice, showing such details as specified by Exelon in Schedule E attached hereto. Notwithstanding the requirements of Schedule E, 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. In the case of Task Orders for Supplemental Resources, the additional detail shall include the calculations utilized to establish the charge including the names, levels and Personnel Rates of the persons performing Services and the number of Person Days worked by each Vendor Personnel. In the case of Task Orders for Project Work, 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 Vendor 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 Vendor's invoice which details amounts due under this Agreement. 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.

Vendor 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 principals applied on a consistent basis. Vendor 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 this Agreement.

9.7 Disputed Charges; Set-Off.

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

9.8 Services Covered.

Both Parties acknowledge that the charges specified in the Task Orders are intended to compensate Vendor fully for all Services and Deliverables to be performed or provided by Vendor pursuant to this

Agreement. Accordingly, Exelon will not be obligated to pay Vendor any amounts in addition to those described in the Task Orders.

10. SAFEGUARDING OF DATA, CONFIDENTIALITY AND AUDIT RIGHTS

10.1 Exelon Information.

(a) Exelon Information shall be and remain the property of Exelon. Vendor 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 Vendor or commercially exploited by or on behalf of Vendor, its employees or agents.

(b) Upon Exelon's request, the termination or expiration of this Agreement 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 Vendor in order to render the Services hereunder, such Exelon Information (including copies thereof) shall be promptly returned to Exelon by Vendor in a form reasonably requested by Exelon or, if Exelon so elects, shall be destroyed.

(c) Exelon Information shall not be utilized by Vendor for any purpose other than that of rendering the Services under this Agreement.

10.2 Safeguarding Exelon Information.

(a) Vendor 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 and any other material provided by Exelon in the possession of Vendor, which shall be no less rigorous than those maintained by Vendor 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) Vendor Personnel shall not attempt to access, or allow access to, any data, files or programs within the information systems environment to which they are not entitled under this Agreement or to which they do not need access to perform the Services. If such access is attained, Vendor shall immediately report such incident to Exelon, describe in detail any accessed materials and return to Exelon all copied or removed materials.

(ii) Vendor 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 which: (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, and (v) any compilation or summary of information or data that is itself Proprietary Information. Without limiting the generality of the foregoing, Vendor acknowledges and agrees that all systems and software that are the subject of this Agreement are the Proprietary Information of Exelon and/or its third-party licensors. For purposes of this Agreement, information shall be deemed to be disclosed by a Party if such information is disclosed by any of its officers, employees, directors, contractors, agents or representatives, including Third-Party Licensors.

(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 this Agreement or to which the other gains access in connection with this Agreement shall be deemed to be the property of the disclosing Party. The receiving Party agrees to (i) receive such 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 this Agreement, and (iv) promptly notify the disclosing Party in writing of any actual or suspected loss or unauthorized use, disclosure or access of the disclosing Party's Proprietary Information of which it becomes aware. The terms and conditions of this Agreement (as well as all information regarding the negotiation of this Agreement) 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 this Agreement 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 this Agreement, 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 this Agreement for any reason. Promptly following the termination or expiration of this Agreement for any reason and, subject to the other provisions of this Agreement, the Parties shall either destroy or deliver (as the Parties mutually agree) to the furnishing Party all 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 this Agreement.

(f) IF VENDOR WILL HAVE ACCESS TO PERSONAL IDENTIFYING INFORMATION OF ANY TYPE OR KIND OF AN EXELON CUSTOMER OR EMPLOYEE, VENDOR SHALL IMMEDIATELY CONTACT EXELON'S SUPPLY REPRESENTATIVE, WHO SHALL CONSULT WITH EXELON'S LEGAL DEPARTMENT TO INCORPORATE INTO THIS AGREEMENT ADDITIONAL PROTECTIONS FOR SUCH INFORMATION.

10.4 Audit Rights.

(a) Vendor 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 Vendor or any of its subcontractors is providing the Services, to equipment and software, to Vendor Personnel, and to data and records relating to Vendor's performance of the Services, for the purpose of performing audits and inspections of either Vendor or any of its subcontractors to: (i) verify the accuracy of Vendor's charges and invoices; and (ii) examine Vendor's performance of the Services including, to the extent applicable to the Services performed by Vendor 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 Vendor 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 Vendor's compliance with the Agreement. Such records shall include, without limitation hereby: all invoices billed to Exelon; payroll records, timesheets and canceled payroll checks; third party invoices for purchases; paid invoices and canceled checks for purchased materials, subcontractor and third-party charges; records relating to air freight and ground transportation. Vendor will provide to such auditors and representatives such assistance, as they reasonably require. Vendor 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 Vendor's Proprietary Information in a manner substantially equivalent to that required of Exelon under this Agreement prior to performing the audit. Exelon's auditors and other representatives will comply with Vendor's reasonable security requirements. The parties agree that each shall bear its own internal and external costs incurred in conducting and supporting the audit

process, except that all Vendor documents to be reviewed by Exelon will be copied by Exelon or Vendor at Vendor's expense.

(b) If an audit uncovers any overcharge, Vendor 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) Vendor shall maintain and provide access, both electronic and physical, upon request to copies of Exelon Data, content, and other property on the ASP System as Exelon requires for update, modification, downloading, or other purposes. Such access shall include escorted access to the physical location where the ASP System is maintained.

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

11. REPRESENTATIONS AND WARRANTIES

11.1 Work Standards.

Vendor represents, warrants and covenants that the Services will be performed with promptness and diligence and executed in a professional manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services.

11.2 Qualified Individuals.

Vendor represents, warrants and covenants that it shall use qualified individuals with suitable training, education, experience and skill to perform the Services.

11.3 Efficiency and Cost Effectiveness.

Vendor represents, warrants and covenants that Vendor will perform the Services efficiently and in a cost-effective manner. This includes making efficient use of software development resources by employing practices such as code re-use.

11.4 Non-Infringement.

Vendor represents, warrants and covenants that no Developed Material or Vendor Material, or any other products, processes, computer software, software modules, media, documentation and other materials provided by Vendor and used in connection with the performance of any Services, nor the possession or use of any of the foregoing by Exelon as contemplated by this Agreement, will infringe any Intellectual Property Right of any third-party, or contain confidential or proprietary material misappropriated by Vendor from any third-party. Vendor further represents, warrants and covenants that with respect to any third-party software products provided to Vendor by Exelon for Vendor's use in performing the Services, Vendor shall use such products only as permitted by the license or other terms governing the use of such products (as communicated to Vendor 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 Vendor or its subcontractors, agents or representatives, (ii) their combination with items or products not provided or recommended by Vendor, 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 Vendor).

11.5 Deliverables.

(a) Vendor represents, warrants and covenants that each Deliverable developed by Vendor 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, Vendor is given written notice of breach of this warranty within the Deliverables Warranty Period, Vendor 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, Vendor will immediately deploy a team of qualified Vendor 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 Vendor Personnel remain within Vendor's organization and regardless of other assignments they may have at the time.

11.6 Viruses and Disabling Code.

Vendor represents, warrants and covenants that Vendor 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 Vendor 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.

11.7 Year 2000.

Vendor represents, warrants and covenants that each and every hardware, software, firmware, mechanical or electrical product utilized, created, assembled, manufactured, developed, or modified in connection with the Services shall, at no additional cost to Exelon, be able to store and process accurately any and all date and date-related data (including, but not limited to, calculating, comparing, storing, processing, recording, valuing, recognizing, validating, presenting, and sequencing) without error or malfunction before, during, and after the twentieth (20th) and twenty-first (21st) centuries, including changing accurately the calendar year to the year 2000, processing leap year calculations, and processing any other dates with unique digit arrangements such as, by way of example, 9/9/99. Exelon may, at no additional cost, require Vendor to demonstrate compliance and/or compliance techniques and test procedures it intends to follow, or evidence of related representations, warranties, covenants and obligations contained herein. These representations, warranties and covenants shall be

in effect so long as the Services or Deliverables provided under this Agreement are used by Exelon, and shall survive any termination or expiration of this Agreement.

11.8 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. INTELLECTUAL PROPERTY RIGHTS

12.1 Exelon Material.

As between Exelon and Vendor, Exelon (or, to the extent applicable, Third-Party Licensors) shall own all Intellectual Property Rights in and to all Material that Exelon creates, furnishes or makes available in connection with this Agreement ("Exelon Material"). Subject to any limitations or restrictions set forth in agreements between Exelon and Third-Party Licensors, Exelon grants Vendor 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 this Agreement 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 Material created pursuant to this Agreement, whether solely by Vendor, or jointly with others ("Developed Material"), shall belong solely and exclusively to Exelon, which will possess all ownership rights in and to such Developed Material, and all Intellectual Property Rights associated therewith. Vendor shall include and enforce appropriate provisions in all subcontracts to ensure the 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 the U.S. copyright laws and that all Intellectual Property Rights in and to each Developed Material shall vest in Exelon on the date such Developed Material is created. In the event that, under applicable law, all Intellectual Property Rights do not vest in Exelon, Vendor (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 Intellectual Property Rights that such persons may have in or to any Developed Material. Vendor (on its own behalf as well as on behalf of its current and future employees, agents and subcontractors) irrevocably waives all Intellectual Property Rights in and to all Developed Material.

(c) Vendor 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 Intellectual Property Rights with respect to the Developed Material. Notwithstanding the foregoing, Vendor (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 this Agreement for any reason.

12.3 Vendor Material.

Exelon's ownership of Developed Material that incorporates any pre-existing Material of Vendor created outside of this Agreement ("Vendor Material") will be subject to Vendor's ownership of such Vendor Material. Unless otherwise agreed under a separate written license agreement executed by the Parties, Vendor 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 Vendor Material as well as any other proprietary Material of Vendor 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 Vendor is incorporated into the Developed Material). Vendor shall obtain Exelon's written approval prior to incorporating any Vendor Material into any Developed Material.

12.4 Third-Party Material.

In performing the Services, Vendor 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 Vendor incorporates any Third-Party Material into any Developed Material, or Vendor 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), Vendor 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, Vendor 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.

12.6 No Implied Licenses.

Except as expressly set forth in this Agreement, no license to Vendor (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 this Agreement.

12.7 Residual Knowledge and Independent Development.

Nothing contained in this Agreement 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 which either Party, individually or jointly, develops or discloses under this Agreement, provided that in doing so such 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 Vendor, to terminate this Agreement and/or any Task Orders for any reason at any time and without liability.

(b) Vendor may terminate this Agreement and any Task Orders entered into pursuant to this Agreement 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 Vendor.

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 this Agreement 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 3.3(d), 3.4(i) or 13.1, in each case subject to the terms of this Agreement, 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 this Agreement or any Task Order, Vendor 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 this Agreement, Vendor shall deliver to Exelon all work in progress and other Developed Material, including source and object code and related documentation in Vendor's possession, in a format specified by Exelon.

14. INSURANCE

14.1 Insurance Coverage.

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

(a) **Employer's Liability Insurance and Worker's Compensation Insurance**, including coverage for occupational injury, illness and disease, and other similar social insurance in accordance with the laws of the country, state, province or territory exercising jurisdiction over the employee with

minimum limits per employee and per event of one million dollars (\$1,000,000.00) and a minimum aggregate limit of one million dollars (\$1,000,000.00) or the minimum limits required by law, whichever limits are greater.

(b) **Comprehensive General Liability Insurance** (with coverages consistent with ISO CG 0001(10/98)), including blanket Products, Completed Operations, Premises Operations, Bodily Injury, Personal and Advertising Injury, Contractual and Broad Form Property Damage liability coverages, on an occurrence basis, with a minimum combined single limit one million dollars (\$1,000,000.00) per occurrence and per project or per location aggregate. This coverage shall be endorsed to name Exelon, its officers, directors, employees, agents, representatives, Affiliates, subsidiaries, successors, and assigns as additional insureds using ISO CG 2026 (11/85).

(c) **Automotive Liability Insurance** covering use of all owned, non-owned and hired automobiles for bodily injury, property damage, uninsured motorist and underinsured motorist liability with a minimum combined single limit per accident of one million dollars (\$1,000,000.00) or the minimum limit required by law, whichever limit is greater. This coverage shall be endorsed to name Exelon as an additional insured

(d) **Professional Liability/Errors and Omissions Insurance** covering liability due to errors or omissions in the performance of Services under this Agreement, with limits of not less than one million dollars (\$1,000,000.00) per claim and one million dollars (\$1,000,000.00) aggregate.

(e) **Commercial Crime Insurance**, including blanket coverage for Employee Dishonesty and Computer Fraud for loss or damage arising out of or in connection with any fraudulent or dishonest acts committed by the employees of Vendor, acting alone or in collusion with others, with a minimum limit per event of one million dollars (\$1,000,000.00).

(f) **Excess or Umbrella Liability Insurance** with a combined single limit of not less than four million dollars (\$4,000,000.00) per occurrence and per project or per location aggregate. These limits apply in excess of each of the policies described in Sections 14.1(a), 14.1(b) and 14.1(c).

14.2 Insurance Conditions.

(a) The insurance in Sections 14.1(a) through 14.1(f) above shall be primary and non-contributing with respect to any insurance or self-insurance that may be maintained by either Party and shall waive all rights of subrogation against Exelon and its Affiliates. Completed Operations coverage, where applicable, will be maintained for not less than three (3) years after the end of operations under this Agreement. The limits required above may be shown as a combination of primary and excess umbrella limits. All coverage required by Section 14.1(b) shall contain standard cross liability provisions.

(b) The insurance and the insurance policies required by this Section 14.2(b) shall provide that no less than thirty (30) days' written notice shall be given to Exelon prior to any modification, cancellation, change or non-renewal of the policies or any reduction in coverage below the limits specified in Sections 14.1(a) through 14.1(f) above. Prior to the commencement of any Services annually during the term of this Agreement, Vendor shall promptly provide certificates of insurance evidencing that Vendor is maintaining the required coverage set forth above. Prior to the commencement of any Services and at Exelon's request at any time thereafter, Vendor shall promptly provide certificates of insurance evidencing that Vendor is maintaining the required coverage set forth above. The insurers selected by Vendor shall be reasonably acceptable to Exelon and each have a

rating in the Best's Key Rating Insurance Guide (latest edition in effect on the latest date stated in the certificates of insurance referred to in the immediately preceding sentence) of A-/VII or better, or be otherwise acceptable to Exelon. Vendor shall require that its subcontractors, if any, maintain and, upon request, provide evidence of, insurance coverages as specified in this Article 14 naming Vendor and Exelon Corporation, its Affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns, as an additional insured or loss payee where relevant.

(c) In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage specified in this Article 14, Vendor shall be solely responsible to take such action. Exelon shall notify Vendor, as soon as practicable, of any loss or damage or other event requiring notice or other action of which Exelon becomes aware, provided that the failure of Exelon to do so will not relieve Vendor of its obligations under this Section 14.2(c). Vendor shall provide Exelon with contemporaneous notice and with such other information as Exelon may request regarding the event.

(d) Failure of Vendor to provide insurance as herein required or failure of Exelon to require evidence of insurance or to notify Vendor of any breach by Vendor of the requirements of this Article 14 shall not be deemed to be a waiver by Exelon of any of the terms of this Agreement, including the obligation of Vendor to defend, indemnify, and hold harmless Exelon as required herein. Commencement of Services without the required certificates of insurance shall not constitute a waiver by Exelon of any rights under this Agreement or any remedy, at law or in equity. The obligation to procure and maintain any insurance required herein is a separate responsibility of Vendor and independent of the duty to furnish a copy or certificate of such insurance policies.

(e) In the event of any failure by Vendor to comply with the insurance requirements in this Article 14, Exelon may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five (5) days' written notice to Vendor, purchase such insurance, at Vendor's expense, provided that Exelon shall have no obligation to do so and if Exelon shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by Exelon shall be promptly reimbursed by Vendor and/or may be withheld from any payment due Vendor, subject to the provisions of Section 9.7.

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

15. FORCE MAJEURE

Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement:

- (i) 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
- (ii) 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. Vendor shall not have the right to any additional payments from Exelon for costs or expenses incurred by Vendor as a result of any force majeure occurrence.

16. INDEMNITIES

16.1 By Vendor.

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

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

16.2 Cross-Indemnity.

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

- (a) the death or bodily injury of any agent, employee, customer, business invitee or business visitor or other person caused by the tortious conduct of the indemnifying Party;
- (b) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of the indemnifying Party; and
- (c) third-party claims arising from the indemnifying Party's breach or alleged breach of its confidentiality obligations under Section 10.3 of this Agreement.

16.3 Infringement Indemnification.

If any Developed Material or any material licensed to Exelon under this Agreement becomes the subject of any infringement claim or proceeding, Vendor 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 this Agreement, 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 this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) business days following receipt of written notice from the indemnitee relating to any claim (but in no event later than five (5) business days prior to the due date of any answer or other papers required to be filed in response to a complaint, petition or other papers filed by the third-party that initiated the action proceeding), the indemnitor shall notify the indemnitee in writing if the indemnitor elects to assume control of the defense and settlement of that claim (a "Notice of Election").

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

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

17. LIMITATION OF LIABILITY

(a) EXCEPT AS PROVIDED IN SECTION 17(c), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY ARISING UNDER OR IN

CONNECTION WITH THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, BREACH OF WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Except as provided in Section 17(c) below, each Party's total liability to the other Party in connection with this Agreement, whether in contract or in tort, shall be limited to the greater of (i) the total charges paid or payable to Vendor under this Agreement or (ii) 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, (ii) damages occasioned by the gross negligence or willful misconduct of a Party, (iii) damages occasioned by the improper or wrongful termination of this Agreement or any Task Order or abandonment of work by Vendor, (iv) damages occasioned by a Party's breach of Section 10.3 or Section 11.4, or (v) damages occasioned by a Party's violation of the Intellectual Property Rights of the other Party.

18. DISPUTE RESOLUTION

Any dispute between the Parties arising out of or relating to this Agreement, including with respect to the interpretation of any provision of this Agreement and with respect to the performance by Vendor or Exelon, shall be resolved as provided in this [Article 18](#).

18.1 Informal Dispute Resolution.

Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally, as follows:

(a) Upon the written request of a Party, each Party shall appoint a designated representative whose task it will be to meet for the purpose of endeavoring to resolve such dispute.

(i) The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, shall be honored in order that each of the Parties may be fully advised of the other's position.

(iii) The specific format for the discussions shall be left to the discretion of the designated representatives.

(b) Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:

(i) the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or

(ii) thirty (30) days after the initial written request to appoint a designated representative pursuant to Section 18.1(a) above (this period shall be deemed to run notwithstanding any claim that the process described in this Section 18.1 was not followed or completed).

This Section 18.1 shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, formal proceedings earlier to (A) avoid the expiration of any applicable limitations period, (B) preserve a superior position with respect to other creditors, or (C) obtain a temporary restraining order or other injunctive relief.

18.2 Continued Performance.

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

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 Commonwealth of Pennsylvania notwithstanding any Pennsylvania 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 Eastern District of Pennsylvania, or (ii) if such court does not have jurisdiction, to the courts of the Commonwealth of Pennsylvania located in Philadelphia, for all litigation which may be brought with respect to the terms of, and the transactions and relationships contemplated by, this Agreement. The Parties further consent to the jurisdiction of any state court located within a district that encompasses assets of a Party against which a judgment has been rendered for the enforcement of such judgment or award against the assets of such Party. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

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 6.2.

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

Chicago Minority Business Development Council (MBE)

Woman's Business Development Center (WBE)

Illinois Department of Transportation (MBE/WBE)

City of Chicago (MBE/WBE)

WMBE Clearinghouse (MBE/WBE)

Minority Supplier Development Council of PA, NJ and DE

Women's Business Enterprise Council of PA, NJ and DE

Minority Business Enterprise Council - City of Philadelphia

Bureau of Contract Administration and Business Development - Commonwealth of Pennsylvania

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

19.5 Relationship of the Parties.

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

19.6 No Waiver of Default.

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

19.7 Remedies Cumulative.

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

19.8 Publicity.

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

19.9 Assignment.

Vendor will not assign, transfer or otherwise convey or delegate any of its rights or duties under this Agreement to any other Party without the prior written consent of Exelon, and any attempt to do so will be void. This Agreement shall be binding upon the respective successors and permitted assigns of the Parties.

19.10 Notices.

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this Section 19.10), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Vendor:

[To be completed]

In the case of Exelon:

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

With a copy to:

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

Either Party may from time to time change the individual(s) to receive notices under this Section 19.10 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.

19.11 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 this Agreement, unless otherwise specifically stated.

(c) The section headings in this Agreement 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 this Agreement.

19.12 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.

19.13 Severability.

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

19.14 Third-Party Beneficiaries.

The Agreement is entered into solely between Exelon and Vendor 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 Vendor to any third-parties.

19.15 Survival.

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

19.16 Entire Agreement; Entering Into Task Orders; Amendments.

This Agreement (including any Schedules 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 this Agreement. To become effective, a Task Order must be signed by an authorized representative of each Party. Modification or amendment of this Agreement or any Task Order, or any part of this Agreement 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 this Agreement, any Schedules or any Task Orders.

19.17 Domain Names

Vendor shall not, either directly or indirectly, claim, record, purchase or otherwise establish any right of ownership or interest in any domain name or other registry of any type or kind using, referencing or incorporating the name, logos or trademarks of Exelon, the Exelon Affiliates or their subsidiaries.

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

[insert the EXELON entity] [acting

by and through its agent,

Exelon Business Services Company, LLC]

[Insert Name of Vendor]

By: _____

By: _____

(Type or print name)

(Type or print name)

Title: _____

Title: _____

GLOSSARY

1. CERTAIN DEFINITIONS

As used in this Agreement:

(a) **“Affiliate”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity (control at least a fifty percent (50%) ownership interest).

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

(c) **“Control”** and its derivatives mean with regard to any entity the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.

(d) **“Deliverable”** means the specific deliverables to be provided by Vendor in performing the Services.

(e) **“Disaster Recovery Plan”** shall mean an agreed upon disaster recovery plan as set forth in Section 6.3.

(f) **“Estimate”** means any Project Estimate, Assessment Phase Estimate or Non-binding Estimate.

(g) **“Exelon Data”** shall mean any information provided by Exelon as so designated.

(h) **“Exelon Information”** means all information, in any form, furnished or made available directly or indirectly to Vendor by Exelon or otherwise obtained by Vendor from Exelon.

(i) **“Including”** and its derivatives (such as “include” and “includes”) mean including without limitation. This term is as defined, whether or not capitalized in this Agreement.

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

(k) **“Intellectual Property Rights”** means, on a worldwide basis, any and all: (i) rights associated with works of authorship, including copyrights, moral rights and mask-works; (ii) Marks; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vi) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

(l) **“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).

(m) **“Marks”** means all trademarks, service marks, trade names, trade dress, symbols, logos, designs, and other source identifiers.

(n) **“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 this Agreement.

(o) **“Milestones”** means significant tasks to be performed or achieved by Vendor in performing Project Work as specified in Task Orders.

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

(q) **“Personnel Rates”** shall mean the daily rates to be charged for Vendor Personnel as set forth in **Schedule D**.

(r) **“Project”** means a discrete project as defined in any Task Order for which Vendor has accountability for specific Deliverables.

(s) **“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.

(t) **“Vendor Personnel”** means partners, employees and Independent Contractors of Vendor and its approved subcontractors assigned to perform the Services pursuant to this Agreement.

2. CROSS REFERENCE TABLE

Definition	Section
Acceptance Period	8.2(a)(i)
Acceptance Tests	8.2(b)(i)
Agreement	Intro Para
Assessment Phase	3.4(b)
Assessment Phase Estimate	3.4(b)
Best Practices	7.1(i)
Defect	8.2(b)(iv)
Deliverables Warranty Period	11.5(a)
Developed Material	12.2(a)
Effective Date	Intro Para
Exelon Engagement Manager	5.1(b)
Exelon Material	12.1
Exelon Technology	7.7(b)
FTEs	3.3(a)
IT	1.1(a)
Key Vendor Positions	5.2(a)
Milestone Estimate	3.4(j)(i)
Non-binding Estimate	3.4(b)
Notice of Election	16.4(a)
Operational Deliverables	8.1
OSHA	6.2(b)
Project Estimate	3.4(a)
Project Work	3.1(a)
Proprietary Information	10.3(a)
Ready for Acceptance	8.1
Recovery Point Objective	6.3
Recovery Time Objective	6.3
Services	1.1(b)
Supplemental Resources	3.1(a)
Task Orders	3.1(b)
Term	4
Third-Party Material	12.4
Vendor Engagement Manager	5.1(a)
Vendor Material	12.3

SCHEDULE A

Form of Task Order for Supplemental Resources

Task Order No. ____

Task Order Effective Date: _____

This Task Order No. ____, together with the Services Agreement between _____ (“Vendor”) and Exelon, dated ____ (the “Agreement”), governs the provision of Supplemental Resources as 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 Agreement.

1. 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 Agreement, will continue to remain in full force and effect until terminated by Exelon.

2. SERVICES

Vendor will perform the Services described below:

[Insert a description of Services to be performed]

3. CHARGES

The charges for the Services performed under this Task Order will be determined as provided in the Agreement.

4. SUPPLEMENTAL RESOURCES MANAGER

[Insert the name, position and contact information of the Vendor manager responsible for the performance of the Supplemental Resources assigned to the Task Order]

5. VENDOR PERSONNEL

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

Name	Position	Role

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

6. SERVICES PERFORMANCE DATES

[List anticipated start and end dates for the Vendor Personnel assigned to perform the work]

7. OTHER PROVISIONS

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

The terms of this Task Order are agreed to by:

[insert the EXELON entity] [acting by and through its agent, Exelon Business Services Company]

Vendor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B**Form of Task Order for Project Work**

Task Order No. ____

Task Order Effective Date: _____

This Task Order No. ____, together with the Services Agreement between _____ (“Vendor”) and Exelon, dated ____ (the “Agreement”), 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 Agreement.

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 Agreement, 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

Vendor will perform the tasks and responsibilities described below (including the provision of all Deliverables), and all associated Vendor obligations set forth in the Agreement, as such tasks, responsibilities and obligations are enhanced, supplemented or changed during the term of this Task Order pursuant to the Agreement (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**

Vendor’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 Milestone 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 Vendor project manager]

10. VENDOR PERSONNEL

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

Name	Position	Role

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

11. EXELON RESPONSIBILITIES

[List Exelon’s specific responsibilities relating to Vendor’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:

[insert the EXELON entity] [acting by and through its agent, Exelon Business Services Company]	Vendor
--	---------------

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE C

Key Vendor Positions

Key Vendor Position	Name

SCHEDULE D

Personnel Rates/Discounts

Labor Category	Years of Experience	Description	Daily Rate	Volume Discount Percentage		
				>\$____ and <\$____	>\$____ and <\$____	>\$____ and <\$____

SCHEDULE E

Invoice Format

[To be supplied]