

**SOFTWARE MAINTENANCE AGREEMENT**

**Between**

**[insert name of Exelon entity],**

**[acting by and through its agent,**

**Exelon Business Services Company]**

**and**

\_\_\_\_\_

**Dated as of \_\_\_\_\_, 200\_**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS .....	3
2. SERVICES .....	3
3. TERM .....	3
4. PAYMENT .....	3
5. CONFIDENTIALITY .....	3
6. REPRESENTATIONS AND WARRANTIES .....	3
7. INSURANCE .....	3
8. INDEMNITIES .....	3
9. LIMITATION OF LIABILITY .....	3
10. TERMINATION .....	3
11. GENERAL .....	3
SCHEDULE A SOFTWARE	
SCHEDULE B FEES	
EXHIBIT 1 DEFINITIONS	
EXHIBIT 2 CERTAIN VENDOR SERVICES-RELATED RESPONSIBILITIES	
EXHIBIT 3 INVOICE FORMAT	
EXHIBIT 4 REQUIRED VENDOR INSURANCE COVERAGES	

**SOFTWARE MAINTENANCE AGREEMENT**

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

WHEREAS, Exelon and Vendor have entered into that certain [Software License Agreement dated \_\_\_\_\_, 200\_\_] (the “License Agreement”) pursuant to which Exelon has licensed certain computer software more specifically described in **Schedule A**; and

WHEREAS, Exelon desires to receive from Vendor, and Vendor desires to provide to Exelon, the computer software maintenance services described herein.

NOW, THEREFORE, Vendor and Exelon agree as follows:

**1. DEFINITIONS****1.1 Definitions.**

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

**2. SERVICES****2.1 General.**

(a) Vendor shall provide the services described in this Agreement (the “Services”) for the benefit of Exelon, for the Software and any portion thereof. Unless otherwise indicated herein, Vendor shall [not] be obligated to provide the Services to any Exelon Affiliates. The Services shall be provided in accordance with the terms hereof and in compliance with the requirements set out in **Exhibit 2**.

**2.2 Telephone Support Service.**

(a) Vendor shall provide to Exelon unlimited telephone support (“Telephone Support Service”) during the Telephone Support Hours. Telephone Support Service shall include telephone and research time performed by Vendor’s Telephone Support Service staff.

(b) Exelon shall report malfunctions in accordance with **Section 2.3(b)** by calling the Telephone Support Service. If a Telephone Support Service staff member is not immediately available to Exelon during the Telephone Support Hours, Exelon will be given the option of leaving a message and Vendor shall return Exelon’s call within the Call Back Response Period. At all other times, a call back will be initiated to Exelon within [two (2) hours] of the original call.

(c) If the Telephone Support Service staff member handling a request from Exelon is unable to provide adequate assistance to Exelon for such request hereunder, then within two (2) hours following the time of Exelon's original request, Exelon shall be contacted by one or more alternative Telephone Support Service staff member(s) who are able to respond to the request to Exelon's reasonable satisfaction. The immediately foregoing sentence notwithstanding, Vendor shall provide malfunction correction services in accordance with Section 2.3 for any Telephone Support Service request that reports a malfunction.

### 2.3 Corrective Maintenance.

(a) Scope. Vendor shall maintain the Software and each component thereof so that such Software and component operate in conformity with the Documentation and with all specifications, performance standards and functional requirements in this Agreement. Vendor promptly shall transmit, by the most expeditious means available, corrective material and related instructions for correcting malfunctions.

(b) Procedure.

(i) Report of Malfunction. With respect to a report of any malfunction, Exelon personnel making such a report will describe to the Telephone Support Service staff the malfunction in reasonable detail and the circumstances under which the malfunction occurred or is occurring and will, with the assistance of the Telephone Support Service staff members, classify the malfunction as a Severity Level 1, 2, 3 or 4 Malfunction.

(ii) Critical Malfunctions. If a Severity Level 1 or 2 Malfunction (each, a "Critical Malfunction") cannot be corrected to Exelon's reasonable satisfaction through communication with the Telephone Support Service staff within [\_\_\_\_\_] ([\_]) hours after Vendor receives the description of the Critical Malfunction, Vendor shall: (1) immediately escalate the problem to Vendor's customer service management; (2) take and continue to take the actions which will most expeditiously resolve the Critical Malfunction; (3) provide a report to Exelon of the steps taken and to be taken to resolve the problem, the progress to correction and the estimated time of correction, and update that report every [\_\_\_\_\_] ([\_]) [hours]/[days] until the Critical Malfunction is resolved; and (4) every [\_\_\_\_\_] ([\_]) [hours]/[days], provide increasing levels of technical expertise and Vendor management involvement in finding a solution to the Critical Malfunction until it has been resolved.

(iii) Vendor's Level of Effort. Vendor will work continuously (around the clock) until any Critical Malfunction for which a correction or workaround has not been achieved has been resolved. Additionally, if a correction or workaround to a Critical Malfunction has not been achieved within [\_\_\_\_\_] ([\_]) [hours]/[days], then Vendor will travel to the site of the Critical Malfunction if Exelon reasonably believes that such travel will increase the probability of expeditious resolution of the Critical Malfunction. Unless otherwise specified by Exelon, Vendor will work continuously during normal Vendor work hours to resolve any Severity Level 3 Malfunction. Vendor and Exelon shall mutually agree upon a schedule within which to resolve any Severity Level 4 Malfunction.

### 2.4 Correction of Malfunctions.

Vendor will correct all malfunctions reported by Exelon.

(a) Action Required from Vendor. For a Critical Malfunction, Vendor will provide an immediate correction which Vendor shall then promptly add to the appropriate part of the Software for Exelon to test. For a Severity Level 3 or 4 Malfunction, Vendor will provide prompt correction upon a schedule to be mutually agreed between the Parties.

(b) Vendor's Obligation to Report Software Problems. If Vendor becomes aware of any problem associated with the Software or any portion thereof through its own research, or through reports of such problems by Vendor's customers other than Exelon, which Vendor reasonably believes may impact the performance of the Software or any portion thereof, or lead to a malfunction, then Vendor shall promptly notify Exelon of such problem and work with Exelon to avoid a malfunction caused by such problem.

(c) Access to be Provided by Exelon. Exelon will provide to Vendor the access to the Software and the equipment on which it runs as may be necessary to perform the Services hereunder.

## 2.5 Vendor Software Specialists.

(a) Exelon may elect to retain, and Vendor shall provide, two (2) specialists familiar with the Software in general, and the Custom Modifications in particular ("Specialists"), in order to provide maintenance Services for the Software via telephone and on-site at the Exelon Facilities.

(b) The Specialists to be retained hereunder, and any replacements thereto shall be mutually agreed upon by Exelon and Vendor. Vendor shall not remove any Specialist without the prior written consent of Exelon, unless a Specialist leaves the employ of Vendor or becomes unable to perform his or her duties because of illness. If a Specialist is no longer associated with Vendor or is incapacitated, then Vendor must supply a new individual to act as Specialist subject to approval by Exelon. Such assignment shall become effective only after completion of such new individual's orientation, the expense of which orientation shall be borne by Vendor. Exelon may require replacement of any Specialist within the first ten (10) business days following such individual's assignment, without bearing liability for said period, if Exelon is not satisfied with the individual's performance. Exelon will pay for any work performed by such Specialist during such ten (10) business days period that Exelon, in the exercise of its sole discretion, believes added value to Vendor's performance of the Services. Within [five (5)] business days of receipt of Exelon's request for replacement of a Specialist, Vendor will replace the individual with another individual who has undergone, at Vendor's expense, appropriate orientation and is acceptable to Exelon. Replacement of Specialists will not increase the price of Services unless Exelon requests a higher-level person. With reasonable advance written notice, other Specialists may be added, as Exelon deems necessary.

(c) Exelon shall purchase the services of each Specialist provided by Vendor hereunder in [\_\_\_\_\_] blocks of time. If Exelon elects to retain more than one such Specialist, Exelon may elect to stagger the start dates of such Specialists. If either Specialist is not fully utilized in providing such Services, Exelon shall have the exclusive right to utilize such Specialists for other tasks. Vendor shall provide semi-monthly reports to the Exelon employee specified by Exelon with respect to the utilization level of these Specialists, and advise Exelon with respect to the most efficient use of their time.

## 2.6 Maintenance Modifications and Enhancements.

(a) Maintenance Modifications and Enhancements to the Software.

(i) Vendor shall notify Exelon whenever any Maintenance Modifications and any Enhancements are first available for licensing by Vendor, along with sufficient information to allow Exelon to decide whether to license such Maintenance Modification or Enhancement, and shall make such Maintenance Modifications and Enhancements available for licensing by Exelon under the License Agreement prior to, or at the same time as, Vendor makes such Maintenance Modifications and Enhancements available for use by any other customer of Vendor.

(ii) Vendor shall maintain in-force maintenance agreements with each third-party software supplier whose software is incorporated in, or necessary for the use of, the Software so that Vendor and Exelon will receive Maintenance Modifications and Enhancements to such software.

(b) Maintenance Modifications and Enhancements to the Custom Modifications.

(i) At the time that Vendor notifies Exelon of any Maintenance Modification or Enhancement pursuant to Section 2.6(a)(i), Vendor also shall advise Exelon of any modifications to the Custom Modifications, or any portion thereof (the “C M Modifications”), that are necessary in order to ensure that the Software continues to function as set forth in the Agreement should Exelon elect to install such Maintenance Modifications or Enhancements.

(ii) If Exelon elects to license and install an Enhancement or Maintenance Modification, then as soon as is reasonably possible following Exelon’s notifying Vendor of such election, Vendor shall provide the applicable C M Modifications.

(iii) Any modification to the Custom Modifications made pursuant to this Section 2.6 shall be an Enhancement or Maintenance Modification for the purposes of the License Agreement.

## 2.7 Open Source or Copyleft Licenses.

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

## 3. **TERM**

### 3.1 Term.

(a) Term. The term of this Agreement (the “Term”) begins on the Effective Date and ends on the date [ ] [( )] years from such date, unless the Agreement is terminated prior thereto in accordance with the terms of this Agreement or upon written agreement of the Parties.

(b) Extension of Term. Exelon shall have the option, exercisable by giving written notice to Vendor not less than thirty (30) days before the expiration of the Term, to renew the Term, upon the then-prevailing terms and conditions, for successive one (1) year periods. Vendor will give Exelon a written notice of Exelon’s right to extend the Term not less than sixty (60) days prior to each expiration thereof.

#### **4. PAYMENT**

##### 4.1 Warranty Period.

There will be no charge to Exelon for the Services provided hereunder during the Warranty Period.

##### 4.2 Fees.

Provided Vendor is not in breach of this Agreement, Exelon will pay Vendor the fees set forth in **Schedule B** for the Services provided by Vendor in accordance with this Agreement.

##### 4.3 Terms of Payment and Invoice Format.

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

(b) Invoice Format. Vendor shall utilize software to generate and reproduce invoices in accordance with the terms hereof and in compliance with the requirements set forth in **Exhibit 3**.

##### 4.4 Incidental Expenses.

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

##### 4.5 Disputed Amounts.

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

##### 4.6 Taxes.

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

(b) Vendor will pay for any tax on goods or services it uses to provide the Software or Services.

(c) Vendor will pay and Exelon will reimburse Vendor for any federal, state, or local sales, use, excise, or similar tax applicable to the provision of the Software or of the Services, if any.

(d) The Parties will cooperate to more accurately determine and minimize their respective tax liability. Each Party will provide tax information or tax documents reasonably requested by the other Party. Each Party will promptly notify the other of any claim for taxes asserted by a taxing authority with jurisdiction over either Party. With respect to any claim arising out of a form or return signed by a Party to this Agreement, the signing Party may control the response to and settlement of the claim, but the other Party may participate to the extent it may be liable.

#### 4.7 Most Favored Customer.

If Vendor provides to another customer services similar to the Services and the fees charged to such customer are lower, in the aggregate, than the fees charged to Exelon under this Agreement, Vendor shall so inform Exelon promptly (but not later than thirty (30) days) after commencing to provide services to such customer and the fees charged to Exelon hereunder shall be equitably adjusted to provide Exelon the benefit of such lower fees. Such adjustment shall be retroactive to the first date on which the lower charges to the other customer became effective. Within thirty (30) days after the Effective Date and on each anniversary of such date during the Term thereafter, Vendor's President or Chief Financial Officer shall certify in writing to Exelon that Vendor is in compliance with this Section 4.7, and shall provide the information reasonably requested by Exelon to verify such compliance.

### **5. CONFIDENTIALITY**

#### 5.1 Confidential Information.

(a) As used in this Agreement, "Confidential Information" means all information, in any form, furnished or made available directly or indirectly by one Party to the other which is marked confidential, restricted, or with a similar designation. In the case of Exelon, Confidential Information also shall include, whether or not designated "Confidential Information," (i) the Custom Modifications, C M Modifications and any related Documentation and specifications; (ii) all information concerning the operations, affairs and businesses of Exelon or its Affiliates, the financial affairs of Exelon or its Affiliates, and the relations of Exelon or its Affiliates with their respective customers, employees and service providers (including customer lists, customer information, account information and consumer markets); (iii) software and specifications provided to Vendor by or through Exelon; and (iv) all other information or data stored on magnetic media or otherwise or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by Vendor under this Agreement. Vendor's Confidential Information shall include Vendor's proprietary methodologies. The terms and conditions of this Agreement (as well as all information regarding the negotiation of this Agreement) shall be deemed to be the Confidential Information of both Parties

(b) For purposes of this Agreement, information shall be deemed to be disclosed by a Party if such information is disclosed by any of its officers, employees, directors, contractors, agents or representatives (other than, in the case of Exelon, disclosures by Vendor).

(c) All Confidential Information disclosed by or on behalf of one Party to the other in the course of performing under this Agreement or to which the other gains access in connection with this Agreement shall be deemed to be the property of the disclosing Party. The receiving Party agrees to (i) receive such Confidential Information in confidence, (ii) use reasonable efforts to maintain the confidentiality of such Confidential Information and not disclose such Confidential Information to third-parties (except for the receiving Party's representatives, agents and contractors who have a need to know, are under a duty of non-disclosure with respect to such information, and are acting for the sole benefit of the receiving Party), which efforts shall accord such Confidential Information at least the same level of protection against unauthorized use and disclosure that the receiving Party customarily accords to its own information of a similar nature, (iii) use or permit the use of such Confidential Information solely in accordance with the terms of this Agreement, and (iv) promptly notify the disclosing Party in writing of any actual or suspected loss or unauthorized use, disclosure or access of the disclosing Party's Confidential Information of which it becomes aware.



(d) The restrictions on use and disclosure set forth above shall not apply when, and to the extent that the Confidential Information: (i) is or becomes generally known to the public through no fault of the receiving Party (or anyone acting on its behalf); (ii) was previously rightfully known to the receiving Party free of any obligation to keep it confidential; (iii) is subsequently disclosed to the receiving Party by a third-party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential; (iv) is independently developed by the receiving Party or a third-party without reference to the disclosing Party's Confidential Information; or (v) is required to be disclosed by the receiving Party as a matter of law, provided that the receiving Party uses all reasonable efforts to provide the disclosing Party with at least ten (10) days' prior notice of such disclosure and the receiving Party discloses only that portion of the Confidential Information that is legally required to be furnished pursuant to the opinion of legal counsel of the receiving Party. Notwithstanding the foregoing, neither Party shall disclose, or permit the disclosure of, the terms or conditions of this Agreement without the prior written consent of the other Party, except (A) as provided in clause (v) above, (B) to the extent necessary to permit the exercise of its rights or the performance of its obligations under this Agreement, or (C) to seek advice from its attorneys, accountants or other professional advisors.

(e) The provisions of this Section 5.1 shall survive the termination or expiration of this Agreement for any reason. Promptly following the termination or expiration of this Agreement for any reason and, subject to the other provisions of this Agreement, the Parties shall either destroy or deliver (as the Parties mutually agree) to the furnishing Party all Confidential Information received during the performance of the Services.

## 5.2 No Requirement of Disclosure or Grant.

Nothing contained in Section 5.1 shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party. Nothing contained in this Article 5 shall be construed as limiting or diminishing in any respect the scope of any licenses granted under this Agreement.

## **6. REPRESENTATIONS AND WARRANTIES**

### 6.1 Services.

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

### 6.2 Maintenance.

Vendor represents, warrants and covenants that during the Warranty Period and the Term:

- (a) the Software will be free of material programming errors and will operate and conform to the Documentation and any other requirements set out in Schedule A; and
- (b) Vendor shall meet or exceed the performance requirements set out in Schedule A.

### 6.3 Ownership.

Vendor represents, warrants and covenants that Vendor is the lawful owner or licensee of the Software and the materials used in the performance of the Services, that the Software and such materials have been lawfully developed or acquired by Vendor and Vendor has the right to grant Exelon the rights to the Software and such materials, including the rights of access to and use of the Software and such material and the proprietary rights in the Custom Modifications, Enhancements and C M Modifications which it grants under this Agreement and the License Agreement, without the consent of any other person or entity.

### 6.4 Non-Infringement.

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

### 6.5 Viruses and Disabling Code.

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

### 6.6 Year 2000.

Vendor represents, warrants and covenants that the Software 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 (20<sup>th</sup>) and twenty-first (21<sup>st</sup>) centuries, including changing accurately the calendar year to the year 2000, processing leap year calculations, and processing any other dates with unique digit arrangements such as, by way of example, 9/9/99. Exelon may, at no additional cost to itself, require Vendor to demonstrate compliance and/or compliance techniques and test procedures it intends to follow, or evidence of related representations, warranties, covenants and obligations contained herein. The representations, warranties and covenants in this [Section 6.6](#) shall be in effect so long as the Software and Services provided under this Agreement are used by Exelon or its Affiliates, and shall survive any termination or expiration of this Agreement.

### 6.7 Modifications.

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

## 6.8 Warranty Disclaimer.

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

## 7. **INSURANCE**

### 7.1 Insurance Coverage.

Vendor shall during the Term have and maintain in force the minimum insurance coverages specified in **Exhibit 4.**

## 8. **INDEMNITIES**

### 8.1 Indemnification.

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

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

### 8.2 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 5.1.

### 8.3 Indemnification Procedures.

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

(a) Promptly after receipt by any entity entitled to indemnification under Sections 8.1 or 8.2 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) Days following receipt of written notice from the indemnitee relating to any claim (but in no event later than five (5) Days 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 Section 8.3(a), 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.

## **9. LIMITATION OF LIABILITY**

### **9.1 Limitation of liability.**

(a) EXCEPT AS PROVIDED IN SECTION 9.1(b), 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 9.1(b), each Party’s total liability to the other Party in connection with this Agreement, whether in contract or in tort, shall be limited to the greater of (i) the total charges paid or payable to Vendor under this Agreement or (ii) [\_\_\_\_] dollars (\$[\_\_\_\_]).

(c) The limitations set forth in Sections 9.1(a) and 9.1(b) shall not apply with respect to: (i) claims that are the subject of indemnification pursuant to Article 8, (ii) damages occasioned by the gross negligence or willful misconduct of a Party, (iii) damages occasioned by a Party’s

breach of Section 5.1, or (iv) damages occasioned by a Party's violation of the Intellectual Property Rights of the other Party.

## 10. TERMINATION

### 10.1 Termination for Cause.

(a) Exelon may terminate this Agreement if Vendor breaches any of its material obligations under this Agreement, and fails to cure such material breach within fifteen (15) days following written notice from Exelon.

(b) Vendor may terminate this Agreement only if Exelon (i) fails to pay Vendor any license fee due and owing under this Agreement which Exelon is not otherwise permitted to withhold from payment pursuant to the terms of this Agreement, and (ii) fails to cure such breach within one hundred twenty (120) days following written notice from Vendor. Vendor may pursue all other legal remedies it may have, including monetary damages, in connection with this and all other breaches by Exelon of Exelon's obligations under this Agreement.

### 10.2 Consequences of Termination.

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

## 11. GENERAL

### 11.1 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.

### 11.2 Jurisdiction.

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

### 11.3 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 1.2 of Exhibit 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.

#### 11.4 Nondiscrimination and Affirmative Action.

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

#### 11.6 Diversity Supplier Spend.

11.7 Exelon is actively committed to supporting Diversity Suppliers as defined in Exelon Procedure No. SM-AC-4001. In support of Exelon's commitment, Vendor will make certain required expenditures with Diversity Suppliers as set forth in a Purchase Order or other writing from Exelon to Vendor. Vendor shall report its expenditures with Diversity Suppliers on a monthly basis, or on a negotiated periodicity, depending on the term of the Agreement or Purchase Order. Vendor shall provide this reporting information by completing the "2<sup>nd</sup> Tier Diversity Reporting Web form" located on Exelon's Supplier Diversity Website [http://www.exeloncorp.com/supply/eed/tier2\\_report/tier2\\_report.shtml](http://www.exeloncorp.com/supply/eed/tier2_report/tier2_report.shtml). Vendor can obtain a user-id and password for the 2<sup>nd</sup> 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 2<sup>nd</sup> Tier Direct/Indirect Profile Form for consideration as 2<sup>nd</sup> 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.

#### 11.8 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.

#### 11.9 Relationship of the Parties.

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

#### 11.10 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.

#### 11.11 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.

#### 11.12 Publicity.

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

#### 11.13 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.

**11.14 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 11.12), or one (1) Day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) 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 11.11 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.

**11.15 Execution; Counterparts.**

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

**11.16 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.

**11.17 Third-Party Beneficiaries.**

This Agreement is entered into solely between Exelon and Vendor and, except for the Parties' indemnification obligations under Article 8 and the rights of Exelon Affiliates to use and copy the Software, will not be deemed to create any rights in any third-parties or to create any obligations of either Exelon or Vendor to any third-parties.



**11.18 Survival.**

Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement will survive any termination or expiration of this Agreement and continue in full force and effect, including Sections 4.1, 4.6, 5.1, 6.4, 6.6, 11.1, 11.2, 11.3 and 11.16 and Articles 8 and 9.

**11.19 Entire Agreement; Amendments.**

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

**SOFTWARE MAINTENANCE AGREEMENT**

---

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

**[insert the EXELON entity] [acting**

**by and through its agent,**

**Exelon Business Services Company]**

**[Insert Name of Vendor]**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Type or print name)

(Type or print name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE A**

**Software**

**1. Description of Software:**

*[Identify each individual product by name and version.]*

**2. Specifications, Performance Standards, and Functional Requirements:**

*[Include here all of the specifications, performance standards, and functional requirements for the Software that are contained in the License Agreement, as well as any that are relevant to any Custom Modifications undertaken since the License Agreement was signed.]*

**3. Documentation:**

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

## SCHEDULE B

Fees1. Fees:<sup>1</sup>

*[Identify here the fees Exelon is to pay to Vendor for the Services (and time and materials rates for Services provided to fix a problem due to Exelon's use of the Software in a manner prohibited by the Documentation).]*

2. Payment Schedule:

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

---

<sup>1</sup> The fees will not be increased for the first two (2) years of the Term. Thereafter, such fees may be increased to Vendor's prevailing fees charged to its other customers generally for similar services, but shall not exceed, in any event, an increase of four percent (4%) per year over the prior year's fees. Notwithstanding the foregoing, in no event will the fees in any year of the Term exceed fifteen percent (15%) of the license fees paid for the Software for such year.

**EXHIBIT 1****Definitions**

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

1. **“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).
2. **“Agreement”** shall mean this Software Maintenance Agreement, and all schedules and exhibits hereto.
3. **“ASP System”** means the Application Service Provider System which, among other things, stores Exelon Data as set forth in Section 1.1(f) of **Exhibit 2**.
4. **“Call Back Response Period”** shall mean thirty (30) minutes from the time of the original call.
5. **“C M Modifications”** shall have the meaning set forth in Section 2.6(b)(i).
6. **“Code”** shall mean computer programming code contained in the Software. If not otherwise specified, Code shall include both Object Code and Source Code. Code shall include Maintenance Modifications and Enhancements licensed by Exelon.
7. **“Confidential Information”** shall have the meaning set forth in Section 5.1(a).
8. **“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.
9. **“Critical Malfunction”** shall have the meaning set forth in Section 2.3(b)(ii).
10. **“Custom Modifications”** shall have the meaning set forth in the License Agreement.
11. **“Disaster Recovery Plan”** shall mean an agreed upon disaster recovery plan set forth in Section 1.4 of **Exhibit 2**.
12. **“Documentation”** shall mean (a) the Documentation as defined in the License Agreement, (b) the specifications, performance standards and other functional requirements set forth on **Schedule A**, and (c) any other written materials agreed by the Parties to be Documentation.
13. **“Enhancements”** shall mean modifications, additions, or substitutions, other than Maintenance Modifications, made to the Code that accomplishes incidental, structural, or functional improvements. Enhancements also include all versions and releases of the Software subsequent to the effective date of the License Agreement.
14. **“Effective Date”** shall have the meaning set forth in the preamble to this Agreement.
15. **“Exelon”** shall have the meaning set forth in the preamble to this Agreement.
16. **“Exelon Data”** shall mean any information provided by Exelon as so designated.

17. **“Include”**, **“includes”**, and **“including”** when following a general statement or term, shall mean “include without limitation”, “includes without limitation”, and “including without limitation”.

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

19. **“License Agreement”** shall have the meaning set forth in the preamble to this Agreement.

20. **“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).

21. **“Maintenance Modifications”** shall mean modifications, updates, or revisions made by Vendor to the Code that correct errors, support new releases of operating systems, or support new models of input-output devices with which the Code is designed to operate.

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

23. **“Notice of Election”** shall have the meaning set forth in [Section 8.3\(a\)](#).

24. **“Object Code”** shall mean Code in machine-readable form generated by compilation of the Source Code and contained in a medium that permits it to be loaded into and operated on the specified equipment.

25. **“OSHA”** shall have the meaning set forth in [Section 1.2\(b\)](#) of [Exhibit 2](#).

26. **“Party”** or **“Parties”** shall have the meanings set forth in the preamble to this Agreement.

27. **“Services”** shall have the meaning set forth in [Section 2.1\(a\)](#).

28. **“Severity Level 1 Malfunction”** shall mean a problem which renders the Software or a major component of the Software inoperative, causes a significant and on-going interruption to the end-user’s activities or causes an unrecoverable loss or corruption of data.

29. **“Severity Level 2 Malfunction”** shall mean a problem which causes the Software to be inoperative, disrupted or malfunctioning and which materially interferes with Exelon’s use of the Software.

30. **“Severity Level 3 Malfunction”** shall mean any problem in the Software which causes the Software not to function in accordance with applicable specifications, including the Documentation, but which causes only a minor impact on Exelon’s use of the Software and for which an acceptable circumvention is available.

31. **“Severity Level 4 Malfunction”** shall mean (a) any general question or request pertaining to the Software and (b) all malfunctions in the Software which are not included in the other malfunction classifications contained in this Agreement.

32. **“Software”** shall mean (a) the software product(s) described in Schedule A; (b) all Maintenance Modifications and Enhancements that are licensed by Exelon or otherwise provided to Exelon by Vendor; (c) all Custom Modifications; (d) all C M Modifications; and (e) the Code contained in or otherwise related to each of the foregoing; and (e) the Documentation.
33. **“Source Code”** shall mean Code in programming languages, including all comments and procedural code, and all related development documents (e.g., flow charts, schematics, statements of principles of operations, end-user manuals, architecture standards, and any other specifications that are used to create or that comprise the Code).
34. **“Specialist”** shall have the meaning set forth in Section 2.5(a).
35. **“Telephone Support Hours”** shall mean the period of 8:00 AM to 9:00 PM, Eastern Time, Monday through Friday.
36. **“Telephone Support Service”** shall have the meaning set forth in Section 2.2(a).
37. **“Term”** shall have the meaning set forth in Section 3.1(a).
38. **“Vendor”** shall have the meaning set forth in the preamble to this Agreement.
39. **“Warranty Period”** shall have the meaning set forth in the License Agreement.

**EXHIBIT 2****Certain Vendor Services-Related Responsibilities****1.1 Exelon Standards.**

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

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

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

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

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

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



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

(e) 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.

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

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

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

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

(b) In order to protect persons and property from damage, injury, or loss, Vendor shall comply with, and cause its subcontractors to comply with, all applicable domestic and foreign occupational health and safety laws and regulations, including those contained in or issued pursuant to the Occupational Safety and Health Act of 1970 ("OSHA"), as amended, or Exelon's safety requirements (to the extent the same is provided to Vendor in advance), whichever is more stringent, in connection with the provision of Services at Exelon facilities. Vendor shall review and monitor the safety programs of its subcontractors

to confirm that such safety programs are consistent with Vendor's overall safety program for the provision of Services at Exelon facilities. Exelon shall not be in charge of, or in any way responsible for, the safe performance of the Services. Vendor shall promptly notify Exelon, in writing, of any material changes in Vendor's safety program or if Vendor discovers any conflicts between Exelon's and OSHA's safety requirements. Vendor's duties and responsibilities for ensuring safety and protection in connection with the Services shall continue until such time as all the Services are completed. Unless otherwise required by Exelon, Vendor shall not create a safety manual for any Services.

**1.3 Use of Subcontractors.**

- (a) Vendor shall not delegate or subcontract any of its obligations under this Agreement without Exelon's prior written approval. Exelon shall have the right to approve or disapprove the use of proposed subcontractors not identified in this Agreement or a Task Order in its sole discretion.
- (b) Vendor shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Vendor's employees and for purposes of this Agreement such work shall be deemed work performed by Vendor. Vendor shall be Exelon's sole point of contact regarding the Services, including with respect to payment.
- (c) Exelon shall have the right to direct Vendor to replace any subcontractor if the subcontractor's performance is materially deficient, good faith doubts exist concerning the subcontractor's ability to render future performance because of changes in the subcontractor's ownership, management, financial condition, or otherwise, or there have been material misrepresentations by or concerning the subcontractor.
- (d) In furtherance, and not in limitation of Article 5, Vendor shall not disclose Exelon Confidential Information to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of Vendor under this Agreement.

**1.4 Backup and Disaster Recovery.**

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

- (a) Back-up and store Exelon Data (on tapes or other storage media as appropriate) on-site for efficient data recovery and off-site to provide protection against disasters and to meet file recovery needs.
- (b) Conduct incremental and full backups (in accordance with mutually agreed upon timeframes) to capture data, and changes to data, on the ASP System.
- (c) Develop and maintain a Disaster Recovery Plan approved by Exelon. In the event of a disaster, Vendor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan.
- (d) Maintain the ability to provide full "hot-site" recovery for the ASP System in accordance with the Disaster Recovery Plan. A hot-site is a fully-equipped computer center which provides one (1) or more computer models, network connections, and the necessary peripheral equipment to replicate the data processing from the primary computer site, including uninterruptible power supplies, printers, consoles, tape drives, redundant environmental conditioning, fire protection and warning devices, intrusion-detection devices, physical security, and adequate office space for personnel to conduct normal data center operations.
- (e) Provide "cold-site" facility in case of extended outage, including some or all of the development environment.

- (f) Plan and conduct disaster recovery tests quarterly each year of the term in coordination with Exelon. Vendor shall document results and provide analysis and recommendations for improvements in recovery capabilities.
  
- (g) Generate a report following each and any disaster measuring performance against the Disaster Recovery Plan and identification of problem areas and plans for resolution.

**EXHIBIT 3**

**Invoice Format**

**[To be Supplied]**

**EXHIBIT 4****Required Vendor Insurance Coverages****1.1 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 1.1(a), 1.1(b) and 1.1(c) above.

**1.2 Insurance Conditions.**

(a) The insurance in Sections 1.1(a), through 1.1(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 years after the end of operations under this

Agreement. The limits required above may be shown as a combination of primary and excess umbrella limits. All coverage required by Section 1.1(b) shall contain standard cross liability provisions.

(b) The insurance and the insurance policies required by this Section 1.2(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 1.1(a), through 1.1(f) above. Prior to the commencement of any Services and 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 **Exhibit 4** naming Vendor and Exelon Corporation, its Affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns, as an additional insured or loss payee where relevant.

(c) In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage specified in this **Exhibit 4**, Vendor shall be solely responsible to take such action. Exelon shall notify Vendor, as soon as practicable, of any loss or damage or other event requiring notice or other action of which Exelon becomes aware, provided that the failure of Exelon to do so will not relieve Vendor of its obligations under this Section 1.2(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 **Exhibit 4** shall not be deemed to be a waiver by Exelon of any of the terms of this Agreement, including the obligation of Vendor to defend, indemnify, and hold harmless Exelon as required herein. Commencement of Services without the required certificates of insurance shall not constitute a waiver by Exelon of any rights under this Agreement or any remedy, at law or in equity. The obligation to procure and maintain any insurance required herein is a separate responsibility of Vendor and independent of the duty to furnish a copy or certificate of such insurance policies.

(e) In the event of any failure by Vendor to comply with the insurance requirements in this **Exhibit 4**, Exelon may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five (5) days' written notice to Vendor, purchase such insurance, at Vendor's expense, provided that Exelon shall have no obligation to do so and if Exelon shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by Exelon shall be promptly reimbursed by Vendor and/or may be withheld from any payment due Vendor.

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