

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

Exelon

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

Between

Commonwealth Edison Company,
acting by and through its agent,
Exelon Business Services Company, LLC

and

Summit Blue Consulting, LLC

Dated as of December 12, 2008

OFFICIAL FILE

I.C.C. DOCKET NO. 11-0646

ComEd Exhibit No. 3.1

Witness _____

Date 6/12/13 Reporter KW

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This Consulting and Professional Services Agreement (this "Agreement") is effective as of the date provided on the cover page hereof between the subsidiary of Exelon Corporation identified on the cover page hereof, acting by and through its agent, Exelon Business Services Company, LLC ("Exelon"), and the contractor entity ("Contractor") as defined below and identified on the signature page hereof. Any references below to Exelon will, if appropriate, be understood to mean those Exelon Affiliates identified in Exhibit A (as amended from time to time by Exelon) which are parties to any future Purchase Orders executed for the performance of different "Specific Projects" (as defined below). In this Agreement and in all future agreements formed with reference to it, the term "Exelon" may refer to one or more than one Affiliate.

This Agreement establishes the terms and conditions on which Exelon may, from time to time, purchase Services (as defined below) from Contractor, which purchases shall be evidenced by the delivery by Exelon to Contractor from time to time of Purchase Orders or similar writings, or by electronic data interchange. The purchase of the Services by Exelon from Contractor is expressly governed by the terms and conditions contained or referred to herein.

ARTICLE I. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

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

"**Agreement**" means this Consulting and Professional Services Agreement between Contractor and Exelon together with all appendices, exhibits, schedules, and attachments hereto, and all Purchase Orders and Change Orders, all as such may be amended, restated, or supplemented from time to time as stated herein.

"**Change Order**" means a written order issued by Exelon that permits and directs an addition to, deletion from, or adjustment or revision to a Purchase Order.

"**Contract Documents**" shall have the meaning assigned to such term in Exhibit B, the Scope of Work for a Specific Project.

"**Contractor**" means the party identified in the Agreement which is to perform the Services pursuant to Purchase Orders for Specific Projects and includes (unless the context of this Agreement clearly requires otherwise) Subcontractors and their respective employees and agents.

"**Contractor's Designated Representative**" shall mean Contractor's representative, or his duly authorized representative, who will provide the general administration of this Agreement for Specific Projects on behalf of Contractor and shall be Contractor's field representative in all matters relating to this Agreement. Contractor's Designated Representative shall be in attendance at the Site during the performance of the Work. Contractor may change its representative at any time. However, a fully qualified replacement must be ready to assume responsibility for Contractor's Designated Representative and is subject to prior approval of Exelon's Designated Representative, which shall not be unreasonably withheld.

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

“Contractor Specifications” shall mean the final Contractor specifications for the Specific Project to be provided by Contractor, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

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

“Designated Environmental Contractor” means an Exelon contractor or supplier whose Work involves significant environmental aspects and potential impacts, and who has been designated as such by Exelon in the Contract Documents.

“Designated Safety Contractor” means an Exelon contractor or supplier whose Work involves exposure to significant safety and health risks, and who has been designated as such by Exelon in the Contract Documents.

“Disaster Recovery Plan” shall mean a disaster recovery plan set forth in Section 3.8.

“Dollars” and **“\$”** mean United States Dollars.

“Drawings” shall mean the final drawings for the Specific Project to be provided by Contractor, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

“Effective Date” shall mean, notwithstanding anything herein to the contrary, the date set forth on the cover page hereto.

“Environmental Laws” means any federal, state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. (“CBRCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. 2601, et seq. (“TSCA”); the Clean Air Act, 42 U.S.C. 7401, et seq. (“CAA”); the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (“FWPCA”); and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq. (“OSHA”) and any other law that governs: (a) the existence, removal, or remediation of Hazardous Substances on real property; (b) the emission, discharge, release, or control of Hazardous Substances into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Substances.

“Exelon Data” shall mean any information provided by Exelon as so designated.

“Exelon’s Designated Representative” shall mean Exelon’s duly authorized representative who will provide the general administration of this Agreement for Specific Projects on behalf of Exelon and shall be Exelon’s field representative in all matters related to this Agreement. Exelon may, in its sole discretion, change its representative at any time or from time to time, and shall promptly notify Contractor, in writing, of any such change.

"Final Completion" shall mean the date for completion of the Specific Project listed in the Purchase Order or Project Schedule for such Specific Project. In the event of a conflict between the date of Final Completion listed in the Purchase Order and the Project Schedule for a Specific Project, the date listed in the Project Schedule shall govern.

"Governmental Authorities" means any and all federal, state, county, municipal, local, foreign or other government, or any agency or subdivision of any or all of the foregoing, or any quasi-governmental agency, self-regulating organization, board, bureau, commission, department, instrumentality, or public body, or any court, administrative agency, arbitrator, mediator, regulator, or other tribunal or adjudicative authority.

"Hazardous Substances" means and includes flammable substances, explosives, radioactive materials, asbestos, hazardous wastes or substances, crude oil or any fraction thereof, refined or partially refined petroleum products or any other wastes, materials, or pollutants included in the definition of "hazardous substance," "toxic substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "special waste," or words of similar import under any Environmental Law.

"Health and Safety Laws" means any federal, state, or local law, regulation, ordinance, standard, guidance, or order pertaining to safety and health in the workplace, including the Occupational Safety and Health Act, 29 U.S.C. 651 et seq. ("OSHA"), and the Toxic Substances Control Act, 15 U.S.C. 2601, et seq. ("TSCA").

"Jobsite" means the location of the Work as set forth in the Purchase Order.

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

"Lien" means any judgment, charge, mortgage, deed of trust, encumbrance, pledge, lease, easement, servitude, exercise of rights, powers or privileges, rights of others, security interest, or claims of any kind, including, among other things, any oral or written agreement to give any of the foregoing or arising under any conditional sale or title retention agreement or under any federal, state, county, municipal, local, or other governmental lien imposed as a result of an actual or alleged violation of any applicable Law.

"Material" means all material, equipment, components, products, supplies, goods, and documentation to be furnished by Contractor and necessary to complete the Work set forth in the Purchase Order.

"Milestone Dates" shall mean the date of Substantial Completion, the date of Final Completion, and any other dates stated in the Purchase Order or Project Schedule for a Specific Project for Contractor's completion of specific components of the Work.

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

“Project Schedule” shall mean the schedule approved by Exelon for the performance of the Work identified in the Purchase Order for each Specific Project. The Project Schedule for each Specific Project shall be one of the Contract Documents and shall be attached as an Exhibit to the Purchase Order for the Specific Project.

“Punchlist” shall mean an itemized list prepared by Contractor and augmented, if necessary, by Exelon, of those portions of the Work, which Exelon’s inspection indicates has not been completed in accordance with the requirements of the Contract Documents.

“Purchase Order” means a document issued by Exelon to Contractor incorporating by reference the Agreement which defines among other things the scope, price, and duration of the Work and the Contract Documents for the Specific Project. As used herein, Purchase Order includes documents that may be variously referred to as “contracts,” “releases” or “purchase order releases” by Affiliates in their Contract Documents.

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

“Scope of Work” shall mean the scope of Work for the Specific Project to be provided by Contractor, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

“Services” means all of the labor, supervision, administration and other services identified in the Scope of Work or required to complete the Work set forth in the Purchase Order, including engineering, design, fabrication, construction, installation, demolition, testing, technical assistance, delivery of Material, if appropriate for the Services rendered, and documentation.

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

“Special Terms and Conditions” means terms and conditions not contained in any general terms and conditions but made part of this Agreement or the Purchase Order by reference.

“Specifications” shall mean the final specifications for the Specific Project to be provided by Exelon, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

“Specific Project” shall mean the Work defined in the Purchase Order to be performed by Contractor at the Site.

“Staff Augmentation” means any and all Work provided hereunder that are either: (1) designated by Exelon as “Staff Augmentation”, (2) not designated by Exelon as “Project”, “Outsourced” or “Outage” work, or (3) are supervised or managed in the day-to-day performance by Exelon.

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

“Submittals” shall mean all drawings, sketches, shop drawings, diagrams, illustrations, schedules, Contractor drawings, and other data or information, which are prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

“Substantial Completion” shall mean the point in time at which the entire or designated portion of the Specific Project is sufficiently complete such that Exelon can occupy and utilize the Specific Project for commissioning, start-up, and completion of performance, and reliability testing as required hereunder, with only Punchlist items remaining to be completed, as reasonably determined by Contractor and approved by Exelon.

“Work” means all Material and Services required to be provided by Contractor under the Contract Documents for the Specific Project. All obligations of Contractor shall be performed as specified in the Purchase Order and the Contract Documents for the Specific Project, including engineering, design, fabrication, construction, installation, demolition, testing, technical assistance, delivery of Material and documentation.

All other capitalized terms used herein as defined terms shall have the meanings ascribed to them in this Agreement.

ARTICLE 2. SCOPE OF AGREEMENT

2.1 Work.

This Agreement is not a requirements contract. Exelon reserves the right to use its own resources and to employ other contractors to perform the same or similar Work at any or all of its facilities, or at facilities of third-parties. During the term of this Agreement, following the issuance of an appropriate Purchase Order, Contractor will furnish the Work identified in the Scope of Work attached to the Purchase Order and substantially in the form of Exhibit B attached hereto. The issuance of a Purchase Order referencing this Agreement to Contractor by an Affiliate means that the Affiliate has agreed that all of the terms and conditions set forth in this Agreement apply to the Purchase Order, unless specifically modified. Subject to the provisions of Section 28.9, no Affiliate will have any right, interest, obligation, or liability under Purchase Orders issued by any other Affiliate. Exelon may send a Purchase Order by means of a variety of electronic commerce and electronic business process alternatives, including the use of Electronic Data Interchange (“EDI”). Should EDI be the selected alternative to conduct business electronically for Purchase Orders (EDI 850), Purchase Order Revisions (EDI 861), Purchase Order Acknowledgements (EDI 855), Invoices (EDI 810), Payment (EDI 820), Product Activity Data (EDI 852), and Advanced Ship Notices (EDI 856), Contractor shall follow Exelon’s published implementation guidelines and be fully compliant with no less than the ANSI X-12 004010 EDI version.

2.2 Applicability of this Agreement to Purchase Orders.

Unless specifically modified, the terms and conditions set forth in this Agreement apply to each Purchase Order in which they are referenced. Subject to Section 2.5, Contractor shall not commence Work without receipt of a Purchase Order from Exelon. The Purchase Order shall specify, at a minimum, the time for performance, Scope of Work, the Contract Documents, and Contractor’s price for the Work. During the

term of this Agreement, Exelon may request Contractor to perform Work by issuing a Purchase Order, signed by Exelon's Designated Representative or other authorized representative of Exelon, to Contractor. Contractor's commencement of performance of the Work shall be deemed an effective mode of acceptance of Exelon's offer or counteroffer, as the case may be, and the terms and conditions contained in this Agreement. Upon the request of Exelon, Contractor shall sign and return the Purchase Order to Exelon's Designated Representative.

2.3 Terms and Conditions of this Agreement and of Purchase Orders.

The terms and conditions of this Agreement supersede any preprinted terms or conditions on any preprinted purchase order or any printed or typed conditions forming a part of Contractor's proposal. Any non-preprinted terms and conditions contained within a Purchase Order issued by Exelon that incorporates by reference this Agreement shall supersede the affected terms and conditions of this Agreement. Any additional or different terms and conditions set forth in Contractor's proposal or preprinted purchase orders, Contractor's Purchase Order acknowledgments, or similar writings, or in Contractor's invoices or electronic data interchange acknowledgments; are objected to by Exelon and will not be binding upon Exelon unless specifically assented to in writing by an authorized representative of Exelon.

2.4 Primacy of Documents.

In the event of any conflict or inconsistency between the documents comprising the Contract Documents for a Specific Project, the authority of the individual documents for each respective Specific Project, relative to the other document, is, in descending order of authority: Purchase Order for a Specific Project; Special Terms and Conditions; Agreement; Drawings; Specifications; Contractor Specifications; and any other documents identified in the Purchase Order for a Specific Project as comprising the Contract Documents for a Specific Project. Notwithstanding the foregoing, the several documents forming the Contract Documents for a Specific Project shall be taken as mutually explanatory of one another; however, in case of ambiguities, discrepancies, or inconsistencies, the primacy of documents shall govern.

2.5 Intentionally Deleted

**ARTICLE 3.
STANDARDS FOR PERFORMANCE**

3.1 Standards.

Contractor shall comply with all standards for the Work that are set forth in the Contract Documents.

3.2 Schedule of Performance.

Contractor shall complete all Work on or prior to the Milestone Dates for such completion set forth in the Contract Documents or the Project Schedule for a Specific Project. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.** Delays or possible delays in performance of the Work or in the completion of Milestone Dates shall be reported within five (5) days after Contractor's discovery thereof to Exelon. Contractor shall take all necessary steps, at no additional cost to Exelon, to recover delays in the Project Schedule.

3.3 Final Completion.

If required by the Contract Documents, no Specific Project shall be deemed complete until after Contractor and Exelon have executed a certificate of Final Completion ("Certificate of Final Completion")

substantially in the form of **Exhibit C** attached hereto. Neither Contractor nor Exelon may unreasonably withhold its execution of a Certificate of Final Completion. However, Exelon is not required to execute a Certificate of Final Completion until all of the Work, including any Punchlist Work and any required documentation, is completed to Exelon's reasonable satisfaction. Contractor shall, at its own expense, complete all Punchlist Work (including all corrections or replacements) and test, inspect, re-test, or re-inspect, as appropriate, any portions of the Work so completed or corrected. Such tests, inspections, re-tests, and re-inspections shall be subject to verification by Exelon.

3.4 Jobsite Investigations.

Contractor represents that it (1) has inspected or has had the opportunity to inspect the Site where the Work is to be performed, (2) is not relying on any investigations performed by or information provided by Exelon relating to the conditions at the Site, (3) has ascertained all the facts concerning conditions to be found at the Site, including all physical characteristics that could in any way affect the Work or Contractor's price, and (4) has satisfied itself as to the conditions under which it will be obligated to operate. ~~There is no condition at the Site that will adversely affect Contractor's ability to perform the Work in accordance with the terms of this Agreement.~~

3.5 Permits, Fees and Notices.

3.5.1 Contractor agrees to obtain and pay for all permits and approvals necessary or appropriate to perform the Work in compliance with applicable Laws, except for those permits Exelon is specifically required to obtain by virtue of the terms of this Agreement or by applicable Laws.

3.5.2 Contractor shall timely tender to Exelon copies of all governmental notices received.

3.6 Compliance with Laws and Exelon Policies and Procedures.

3.6.1 Contractor warrants that all Work performed hereunder and all Work and Work Product (as hereinafter defined) generated in connection therewith shall fully comply with all applicable Laws. Contractor shall make all notifications relating to commencement and progress of the Work as required by applicable Laws. Additionally, where not in conflict with any other provision of this Section 3.6, Contractor will comply with all applicable rules, policies, Jobsite requirements, and procedures of Exelon ("Policies and Procedures"), which shall be provided to Contractor or posted on a secure website as designated by Exelon. Exelon reserves the right to revise or update its Policies and Procedures from time to time. At the request of Exelon or on at least an annual basis, Contractor shall acknowledge in writing which rules, policies, Jobsite requirements, and procedures of Exelon it has reviewed.

3.6.2 Policies and Procedures of Commonwealth Edison Company and PECO Energy Company can each be found on its secure website. Contractor shall be given a password to access the website. Contractor shall be responsible for checking the website periodically (but in no event less frequently than monthly) for any updates or revisions to the Policies and Procedures.

3.6.3 Policies and Procedures of Exelon Generation Company, LLC, and AmerGen Energy Company, LLC can each be found on its secure website. Contractor shall be given a password to access the website. Contractor shall be responsible for checking the website periodically (but in no event less frequently than monthly) for any updates or revisions to the Policies and Procedures.

3.6.4 Policies and Procedures of Exelon Business Services Company can be found on its secure website. Contractor shall be given a password to access the website. Contractor shall be responsible for checking the website periodically (but in no event less frequently than monthly) for any updates or revisions to the Policies and Procedures.

3.6.5 Contractor warrants that it shall fully comply with those rules promulgated by the U.S. Department of Energy ("DOE") concerning Assistance to Foreign Atomic Energy Activities set forth at 10 CFR Part 810, as amended from time to time, included among which are rules regulating the granting of access to and use of DOE controlled information provided by Exelon or a U.S. person under the DOE rules. Consistent therewith, DOE controlled information assistance is within the scope of DOE's general authorization set forth at 10 CFR section 810.7 or if the transfer of such information is authorized by a special authorization issued by DOE pursuant to 10 CFR section 810.10.

3.7 Compliance with Code of Business Conduct.

In the performance of any activities related to the Work, Contractor, Subcontractors, and their respective agents and employees involved in the Work, shall adhere at all times to the provisions contained in Exelon's Code of Business Conduct, which can be found on its website, http://media.corporate-ir.net/media_files/irol/12/124298/corpgov/exc_codebusconduct_061013.pdf, or in booklet form upon request. In conjunction therewith, Contractor, Subcontractors and their respective agents and employees, upon request by Exelon, shall complete a Certification of Compliance in a form provided by Exelon.

3.8 Disaster Recovery and Business Continuity.

Contractor shall provide backup, disaster recovery and storage capabilities so as to maximize availability and progress of the Work during an event that would otherwise affect the performance or delivery of the Work. At a minimum, such capabilities will provide for restoration of Work within the timeframes set forth in the Disaster Recovery Plan. Contractor's responsibilities shall include the following:

3.8.1 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.

3.8.2 Conduct incremental and full back-ups (in accordance with the Disaster Recovery Plan) to capture data, and changes to data.

3.8.3 Develop, maintain and submit a Disaster Recovery Plan to Exelon including plans, measures and arrangements to ensure the continuous delivery of critical products and services, which permits Contractor to recover its facility, data, assets and personnel. In the event of a disaster, Contractor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan.

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

3.9 Subcontractor Compliance.

Contractor shall require that all its Subcontractors comply with all requirements of this Article 3.

**ARTICLE 4.
WARRANTIES**

4.1 Performance of Work.

Contractor warrants that the Services furnished to Exelon under this Agreement shall (1) comply with the specifications contained in the Contract Documents, and (2) be performed in accordance with the then prevailing applicable Laws, and industry standards and practices.

4.2 Remedies.

If any of the Services do not comply with the foregoing warranties and Exelon notifies Contractor within 1 year (or such longer period as specified in the Contract Documents, or provided by a manufacturer, supplier, or Subcontractor) after the date Exelon has accepted or, where required by the Contract Documents, Exelon has signed a Certificate of Final Completion for the Services, then Contractor shall (at its sole expense) promptly replace or re-perform the nonconforming Services. All such re-performed Services shall be performed on a schedule to be agreed upon by Exelon. The warranty for any such re-performed Services pursuant to Section 4.1 shall be 2 years from the date of Exelon's acceptance of such re-performed Services, or for the duration of the unused warranty period if such period is longer.

4.3 Inspection.

Exelon's inspection, testing, acceptance, payment, or use of any Services shall not affect the warranties and obligations of Contractor under this Agreement or the Contract Documents, and such warranties and obligations shall survive any such inspection, testing, acceptance, payment, or use.

4.4 Exelon's Right to Perform.

In the event of Contractor's failure to re-perform the Services, in accordance with the terms hereof, Exelon, after notice to Contractor, may correct any deficiencies in the Services, or may purchase replacement Services. Exelon may either invoice Contractor for the cost of correcting the deficiencies (including the costs directly attributable to other services that are required to be performed in connection with the correction of such deficiencies), invoice Contractor for the cost of replacement, or, deduct the cost associated with correction or replacement from any payments due or subsequently due Contractor.

4.5 Assignment of Warranties.

Contractor agrees that it will obtain and shall and does hereby assign to Exelon the benefits of any warranties provided by Subcontractors of the Services and will perform its responsibilities so that such warranties remain in full force and effect. Such assignment shall not relieve Contractor of its warranty obligations to Exelon under this Agreement or the Contract Documents.

**ARTICLE 5.
PAYMENT**

5.1 Pricing for Services.

In consideration for the performance of acceptable Services, unless otherwise stated in the Purchase Order, Exelon will pay to Contractor the prices provided in the Pricing Schedule attached hereto as **Exhibit D**, which prices shall remain fixed for the term of this Agreement or, if shorter, the period set forth in the

Pricing Schedule.

5.2 Taxes.

Except for state sales or use taxes that apply to this purchase, Contractor's price is inclusive of any and all taxes, fees, excises, and charges which are now or hereafter imposed by Governmental Authority with respect to the prices set forth in the Pricing Schedule and/or the Purchase Order, and Exelon shall not be required or obligated to reimburse Contractor for any taxes or similar expenses which may arise or be incurred in connection with delivery of the performance of the Services. The invoice shall separately list taxable and nontaxable charges where applicable. Unless Exelon provides Contractor an exemption certificate or notifies Contractor that Exelon will pay such taxes directly to the applicable Department of Revenue, then (i) state sales and use tax, where applicable, shall be billed on the invoice if Contractor is authorized by applicable Law to collect such tax or (ii) if subsection (i) is not applicable, the tax shall be billed on an invoice as reimbursement by Exelon to Contractor at the time Contractor pays such tax to the appropriate state. Contractor shall bill Exelon for collection or reimbursement of taxes, as applicable, prior to Final Completion and shall bill as a dollar for dollar collection or reimbursement, as applicable (dollar collection/reimbursement for dollar paid by Contractor). To the extent Contractor fails to bill Exelon pursuant to this Section 5.2, then Contractor shall be responsible for all penalties and interest payments associated with such failure (whether assessed to Exelon or Contractor) and the payment of such tax if Section 5.9.5 is applicable. Contractor shall not include state sales or use tax in its prices for the Services. Exelon shall have the right to direct the basis on which any taxes included in the prices or for which it may be responsible will be paid or contested and to control any contest, including the right to initiate any contest, in the name of Contractor. Exelon shall reimburse Contractor for any interest, penalties, or expenses Contractor may incur as a result of any contest initiated or any direction given by Exelon with respect to the payment of such taxes. Contractor will promptly furnish Exelon with all information Exelon requests for the purpose of determining the amount of any tax liability under this Agreement. At the request of Exelon, Contractor shall prepare, execute, and deliver to Exelon a Federal Form W-9 or the equivalent thereof. Contractor shall comply with the reporting requirements of all Governmental Authorities, and, upon the request of Exelon, will provide proof that Contractor has complied with such reporting requirements.

5.3 Submission of Invoices.

Contractor shall submit invoices to Exelon, at the location designated by Exelon on the Purchase Order, as follows: (i) if Work is complete in less than 30 days, then Contractor shall submit an invoice within 30 days after completion of Work; or (ii) if Work is completed in more than 30 days, then Contractor shall submit an invoice every 30 days for Work performed during the previous 30 day period. Unless otherwise specified in the Purchase Order, the invoice shall be submitted in electronic format to "APIInvoices@exeloncorp.com". Subject to Section 5.9, Exelon shall pay all undisputed invoices within forty-five (45) days after receipt and acceptance by Exelon of the invoice.

5.4 Invoice Format and Copies.

Contractor shall submit one original invoice to Exelon's Accounts Payable and, upon the request of Exelon's Designated Representative, one duplicate of each invoice shall be sent to Exelon's Designated Representative. Each invoice shall include: (a) Contractor's name and address; (b) Purchase Order number, release number (if applicable); (c) date, (d) itemization of services rendered and applicable fees; and (e) total amount due for the time period covered by the invoice. If the Work is being performed pursuant to a cost-plus or time-and-material (or any variation thereof) Purchase Order, each invoice shall also include a detailed itemized list of the costs of Work covered by the invoice identifying the number of

each class of employees, number of regular hours worked, number of overtime hours worked, rates charged, a copy of all Subcontractor itemized invoices, separately itemized charges for freight, for all material used, all adequately described, with all applicable sales and use taxes stated. No overtime hours shall be charged to Exelon without Exelon's prior written approval. Overtime hours shall be billed as such rather than as a greater number of regular hours. Each invoice shall also identify all authorized expenses incurred during the time period, and shall be accompanied by supporting documentation. Invoices that Exelon deems inaccurate or incomplete, in Exelon's sole discretion, may be returned to Contractor for correction and re-submittal.

5.5 Intentionally Deleted

5.6 Intentionally Deleted

5.7 Reports.

5.7.1 If required by Exelon, Contractor shall submit to Exelon on the first Day of each month following the month in which the Purchase Order is dated, a report dated up to the day before submission thereof, in such form as shall be specified by Exelon, showing the progress made by Contractor toward the completion of the Work to the date of each report. Each report shall include an updated Project Schedule, a list of Contractor's and its Subcontractors' employees performing Work at the Site, and a discussion of Contractor's planned activities for the next month. Contractor shall continuously monitor, report, forecast, and control the progress of the Work in accordance with the Project Schedule. Contractor shall provide increasing scheduling detail as the Work progresses. Contractor's reporting shall be sufficiently detailed to present to Exelon an accurate status of the Work's Project Schedule, variances from the Project Schedule and reasons therefor, and corrective action planned.

5.7.2 If Exelon requires a report pursuant to Section 5.7.1 and if the Work is being performed pursuant to a cost-plus or time-and-material (or any variation thereof) Purchase Order, Contractor shall submit a weekly report to Exelon for each Specific Project. Each report shall include, in addition to the information required by Section 5.7.1, the following: (1) time sheets listing Contractor's and Subcontractor's employees, with occupation descriptions and number of regular and overtime hours worked; and (2) a list of chargeable material and quantities.

5.8 Change Orders Affecting Price.

No Change Order that has the effect of increasing the cost to Exelon (whether because of an increase in the prices for the Services, the amount or the scope of the Services, or otherwise) shall be binding upon Exelon unless the same is approved in writing by Exelon.

5.9 Grounds for Not Paying Invoices.

Exelon may decline to pay an invoice, in whole or in part, due to any of the following:

5.9.1 Material breach by Contractor of any of its obligations under this Agreement or Purchase Order, including the costs to Exelon of remedying the breach (whether by re-performing the Services or otherwise) and all other costs directly attributable to other services that are required to be performed in connection with remedying such breach;

5.9.2 Contractor's failure to properly pay Subcontractors;

5.9.3 Reasonable evidence that the Services will not be completed within the time requirements specified in the Purchase Order or Project Schedule; or

5.9.4 Unsubstantiated or unsupported amounts billed by Contractor.

5.9.5 Contractor's failure to submit an invoice within 180 days of the applicable submission provisions of Section 5.3.

5.10 Final Payment.

Subject to the fulfillment of Contractor's obligations under the Contract Documents, final payment of all moneys due but not previously paid to Contractor hereunder shall be made within forty-five (45) days after receipt by Exelon of Contractor's final invoice ("Final Payment"), subject, however, to the condition precedent that Final Payment shall not be due until Exelon accepts the Work, or, if required by the Contract Documents, Exelon and Contractor execute a Certificate of Final Completion and, on Specific Projects involving the construction of improvements to Exelon's property, Contractor shall have given Exelon evidence satisfactory to Exelon that all liens, claims, obligations, and liabilities against Exelon and its premises (including the Specific Project and the Site), or in respect to the Work or chargeable to Exelon have been fully paid, satisfied, and released. Such evidence shall include Contractor's final, unconditional lien waiver for the final cost of the Work performed by Contractor.

5.11 Payment Not Waiver of Contractor's Breach.

No partial payment or Final Payment made by Exelon or the execution of a Certificate of Final Completion shall be construed as a waiver of any breach hereof by Contractor or as an acceptance of defective portions of the Work or of any of the Work which does not strictly comply with all requirements of the Contract Documents.

5.12 Right to Setoff.

Exelon may setoff against any amount payable under this Agreement or a Purchase Order any and all present and future indebtedness of Contractor to Exelon (including any indebtedness for which Exelon may be primarily or contingently liable or ultimately responsible or which is or may become a lien on any property of Exelon) arising from this Agreement or a Purchase Order.

**ARTICLE 6.
LIQUIDATED DAMAGES**

If agreed by the parties, in the event of a delay by Contractor in achieving Substantial Completion as specified in the Purchase Order or Project Schedule, for any reason that is not excused under Section 12.3, Contractor shall pay to Exelon as liquidated damages the amounts specified in the Purchase Order.

**ARTICLE 7.
TERM**

7.1 Initial Term.

The term of this Agreement shall be ___ years from the Effective Date or if no term is specified then 1 year from the Effective Date.

7.2 Renewal Terms.

Upon the expiration of the initial term of this Agreement, this Agreement shall be automatically renewed on a month-to-month basis, provided that either party may terminate this Agreement thereafter by providing at least 30 days written notice to the other party of such termination. However, the terms of this Agreement will survive such termination until a Certificate of Final Completion or Final Payment is issued for all Purchase Orders issued pursuant to this Agreement and other obligations, such as warranty obligations, which by the terms of this Agreement continue beyond the termination of this Agreement. Notwithstanding anything herein to the contrary, the termination of this Agreement shall not affect or excuse the performance of either party pursuant to any then effective Purchase Order(s), except as otherwise provided in Article 17.

**ARTICLE 8.
CONTRACTOR'S DRAWINGS; SAMPLES**

8.1 Drawings.

Any drawings or Submittals required by this Agreement to be submitted to Exelon for review shall be submitted by Contractor without unreasonable delay, and any Work affected thereby started prior to written acceptance by Exelon shall be at Contractor's risk. All drawings or Submittals provided by Contractor may be used by Exelon in connection with the installation, startup, maintenance, operation, and repair of the Work and may be transferred to any transferee of the Work. Review by Exelon shall not relieve

Contractor from fulfilling all of Contractor's obligations under this Agreement or the Contract Documents, including obligations relating to design and detailing. As far as practicable, each drawing or Submittal shall bear a cross-reference note referring to the sheet number or numbers of Exelon's drawings showing the same Work.

8.2 Samples.

If Exelon has requested a sample or mock up of all or any portion of the Work, Contractor shall not commence the associated Work until Exelon has received such samples, or reviewed such mock up, and acknowledged in writing its acceptance of such samples or mock up. All Work is required to conform to such samples or mock up, and no change in the Work or its method of production shall be made without the written consent of Exelon.

**ARTICLE 9.
EXELON'S PROPERTY**

All tools, tooling, designs, patterns, dies, molds, drawings, and other materials supplied by Exelon remain Exelon's property, and Contractor agrees to maintain a log upon receipt of such Exelon-furnished property which will be used for final disposal or return of such property based on instructions furnished by Exelon. Contractor shall at its expense maintain all such property in its possession in good condition and repair and indemnify Exelon for all damage or loss to such property (other than ordinary wear and tear). Contractor agrees that use of any such Exelon property will not affect the warranties set forth in the Agreement or the Contract Documents.

**ARTICLE 10.
PERFORMANCE OR PROCUREMENT PROVISIONS**

In the event of termination of this Agreement or change in the Work, no claim will be allowed for performance or procurement in advance of the Project Schedule, except as was reasonably necessary to meet deliveries required by the Project Schedule.

**ARTICLE 11.
CHANGES IN THE WORK**

11.1 Exelon Changes.

Exelon shall have the right to order changes, through a written Change Order, to be made in the Work, including changes in the Specifications, Contractor Specifications, drawings, designs, and time and place of delivery. If these changes affect Contractor's costs, performance schedules, warranties, and other provisions of this Agreement and/or the Purchase Order, the prices and other affected provisions shall be equitably adjusted by agreement between Contractor and Exelon. Any adjustments shall be preceded by Contractor's detailed proposal therefor. Unless otherwise agreed to in writing by Exelon, Contractor shall bear the costs of such detailed proposal.

11.2 Claims.

If Contractor has any claim against Exelon, such as for extra work, changes, or delays, notice of each such claim shall be submitted in writing to Exelon. Any claim by Contractor shall be deemed waived unless made in writing within ten (10) days after the occurrence of the event which precipitated the claim.

Notwithstanding anything to the contrary, no claim shall be allowed if asserted after Final Payment pursuant to the Purchase Order.

11.3 Payment for Changes.

All requests for payments made pursuant to a Change Order shall be shown separately on Contractor's invoices, and shall not be included with amounts applicable to the prices as originally specified in the Agreement or a Purchase Order. All invoices covering additions to or credits due under this Agreement or a Purchase Order shall refer to the specific Change Order issued by Exelon with respect to the addition or credit, and will not be honored unless this reference is included.

**ARTICLE 12.
DELAY AND ACCELERATION**

12.1 No Extension of Final Completion Date.

If Contractor is delayed at any time for any reason during the execution and completion of any portion of the Work, then Contractor shall employ additional personnel as are reasonably necessary to accelerate the progress of the Work to meet the Milestone Dates identified in the Purchase Order or Project Schedule. Subject to the provisions of Section 12.2, Exelon will not pay and Contractor shall bear Contractor's increased costs related to Contractor's accelerated performance. Subject to the terms of the Contract Documents, Contractor acknowledges and agrees that no extension to the date of Final Completion identified in the Purchase Order or Project Schedule shall be granted unless agreed to in writing by Exelon and Contractor.

12.2 Compensable Delay Claim.

If Contractor's need to accelerate its Work is caused by a Compensable Delay (as defined in Section 12.3), then Contractor shall make a written claim to be compensated for Contractor's increased costs resulting from the Compensable Delay as Contractor's sole remedy for such a Compensable Delay.

12.3 Compensable Delay.

For purposes of this Agreement, compensable delays ("Compensable Delay") shall include only the following events and only if they impact the critical path of the Specific Project: (1) material neglectful act or omission by Exelon; and (2) material change ordered in the Work not due to Contractor's fault.

12.4 Acceleration Ordered by Exelon.

If Contractor does not perform the Work in accordance with the Project Schedule and a Change Order has not otherwise been agreed to and executed by the parties, then Exelon may, in its sole discretion, direct Contractor to accelerate the Work by employing additional personnel or providing overtime to existing personnel as is necessary to complete the Work by the Milestone Dates. The costs associated with the acceleration ordered by Exelon shall be at Contractor's expense, except to the extent Exelon accepts Contractor's submitted claim for a modification to Contractor's costs pursuant to Section 12.2.

**ARTICLE 13.
LOSS OR DAMAGE**

Risk of loss or damage to the Work or any property of Exelon in the custody of Contractor shall remain with Contractor until Exelon accepts the Work, or, if required by the Contract Documents, Contractor and

Exelon execute a Certificate of Final Completion. If any loss of or damage to the Work occurs prior to the date of acceptance or, where required, the date Contractor and Exelon execute a Certificate of Final Completion, Contractor shall at its sole expense promptly repair or replace the portion of the Work affected. Contractor shall be entitled to receive from Exelon the compensation received by Exelon or the proceeds of any applicable insurance policy covering the loss or damage. Unless otherwise provided in this Agreement, Exelon's insurance policies will not in any event cover property of Contractor unless such property is built into or intended to be built into the Work and may be subject, in each case, to substantial deductible amounts

**ARTICLE 14.
CONTRACTOR'S INDEMNIFICATION**

14.1 Indemnification

Contractor shall, to the fullest extent permitted by Law, indemnify, defend upon request, and hold harmless Exelon and its officers, directors, employees, agents, representatives, subsidiaries, affiliates, successors, and assigns ("Exelon Parties") against all losses, claims, damages, expense (including reasonable attorneys' fees and costs) and liabilities sustained or incurred by the Exelon Parties for any damage, harm, loss or injury of any kind, direct or indirect, to any property or person (including death), including claims for injuries to employees of the Exelon Parties, Contractor and/or any Subcontractor, arising directly or indirectly out of any negligent act, omission or conduct, willful misconduct or default by Contractor or a Subcontractor or their respective officers, directors, employees, agents, representative, subsidiaries, successors, or assigns ("Contractor Parties") and/or arising directly or indirectly out of or in any manner associated with the Work under this Agreement or any contact with or encountering of any property, equipment, vehicles, facilities or personnel of the Exelon Parties. Contractor shall further, to the fullest extent permitted by Law, indemnify, defend Exelon Parties upon request, and hold Exelon Parties harmless against any loss sustained or incurred by Exelon Parties (including reasonable attorneys' fees and expenses) for any breach or nonperformance by Contractor or its Subcontractors of any portion of this Agreement. Exelon Parties' right to indemnification shall specifically include loss or damage to Exelon Parties' property. Exelon Parties' right to indemnification under this Section 14.1 shall include all loss, costs, legal fees and/or expenses associated with obtaining legal advice, prosecuting or defending any legal claim regarding insurance coverage, breach of this Agreement, contractual indemnity under this Agreement, or defense of any lawsuit filed by anyone for any claim relating either directly or indirectly to the Work or this Agreement. After Exelon is notified of a claim, Exelon will provide Contractor with prompt written notice of the claim.

14.2 Limitations on Indemnity

To the extent any Law may prohibit any application of all or any part of the indemnity obligations in this Agreement, it is the intent of the parties that such provisions are severable, and shall be construed to impose the indemnity obligation in all circumstances, applications, and situations to the fullest extent permitted by Law.

14.3 Indemnification for Claims by Governmental Authorities or Others

Contractor shall indemnify, hold harmless, and upon request, defend Exelon Parties from any claim, liability, damage, expense, suit, or demand (including reasonable attorneys' fees and court costs) for claims by Governmental Authorities or others (including Subcontractors and the employees of Contractor, said Subcontractors, or Exelon) of any (1) actual or asserted failure of Contractor or any Subcontractor to comply with any Law, including actual or asserted failure of Contractor or any Subcontractor to pay wages,

compensation, taxes, duties, or fees or to comply with employee safety orders, safe place, or employment laws, or (2) any claims asserted against Exelon Parties alleging that any of the Exelon Parties is an employer, co-employer or joint employer of any Contractor Personnel; or (3) any actual or asserted failure of an Exelon Party to comply with any Law by reason of any act, omission, conduct, negligence or default by Contractor.

**ARTICLE 15.
INSURANCE**

15.1 Required Coverages.

Contractor shall provide and maintain, and shall require each Subcontractor (regardless of tier) to provide and maintain, in effect during the performance of any Work under the Agreement minimum insurance coverage with carriers satisfactory to Exelon including:

15.1.1 Workers Compensation insurance with statutory limits, as required by the state in which the Work is to be performed, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence.

15.1.2 Commercial general liability (CGL) insurance (with coverage consistent with ISO Form CG 00 01 12 04) with a limit of not less than two million dollars (\$2,000,000.00) per occurrence and per project or per location aggregate, covering liability for bodily injury and property damage, arising from premises, operations, independent contractors, personal injury/advertising injury, blanket contractual liability, and products/completed operations for not less than three (3) years from the date Exelon and Contractor execute a Certificate of Final Completion, if applicable, or the date Exelon accepts the Work. CGL insurance includes coverage for claims against Exelon for injuries to employees of Contractor or any Subcontractors..

15.1.3 Automobile liability insurance coverage (including coverage for claims against Exelon for injuries to employees of Contractor or any Subcontractors) for owned, non-owned, and hired autos with a limit of not less than one million dollars (\$1,000,000.00) per accident.

15.1.6 If this Agreement involves or includes Contractor providing or performing design, engineering, consulting, or any professional service, professional liability insurance with a limit of not less than two million dollars (\$2,000,000.00) per occurrence. If any such policy is written on a claims made basis, the retroactive date may not be advanced beyond the date of this Agreement, and coverage shall be maintained in full force and effect for 3 years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the parties.

15.1.8 Insurance coverage provided by Contractor under this Article 15 shall not include any of the following: any claims made insurance policies (except professional liability); any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000.00) unless approved in writing by Exelon; any endorsement limiting coverage available to Exelon which is otherwise required by this Article 15; and any policy or endorsement language that (1) negates coverage to Exelon for Exelon's own negligence, (2) limits the duty to defend Exelon under the policy, (3) permits the recovery of defense costs from any additional insured, or (4) limits the scope of coverage for liability assumed under a contract.

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

15.1.9.1 Be primary and non-contributory to any other insurance carried by Exelon;

15.1.9.2 Contain cross-liability coverage as provided under standard ISO Forms' separation of insureds clause; and

15.1.9.3 Provide for a waiver of all rights of subrogation which Contractor's insurance carrier might exercise against Exelon.

15.2 Additional Coverages.

Exelon reserves the right to require Contractor to provide and maintain additional coverages in the event that the particular Work involves unusual risks.

15.3 Additional Insured Endorsement.

All liability insurance policies (except professional liability) shall name Exelon, its officers, directors, employees, agents, representatives, Affiliates, subsidiaries, successors, and assigns, as additional insureds, shall be primary to any other insurance carried by Exelon, and shall provide coverage consistent with ISO Form CG 2026 (11/85), or the combination of ISO Form CG 20 10 10 01 and CG 20 37 10 01, and shall maintain the required coverages (including but not limited to coverage for claims against Exelon for injuries to employees of Contractor or any Subcontractors), naming Exelon as an additional insured, for a period of not less than two (2) years from the date Exelon and Contractor execute a Certificate of Final Completion, if applicable, or the date Exelon accepts the Work.

15.4 Evidence of Insurance.

Contractor shall provide evidence of the required insurance coverage and file with Exelon a Certificate of Insurance acceptable to Exelon prior to commencement of the Work. The Insurance and the insurance policies required by this Article 15 shall contain a provision that coverages afforded under the policies will not be canceled, allowed to expire or the limits in any manner reduced until at least thirty (30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to Exelon. Exelon may inspect any or all policies of insurance at any time.

15.5 Waiver of Subrogation.

Contractor shall waive all rights of subrogation against Exelon under those policies procured in accordance with this Agreement.

15.6 Ratings.

All insurance coverage shall be provided by insurance companies acceptable to Exelon and having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificate of Insurance referred to in Section 15.4).

15.7 Breach of Agreement.

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

15.8 Non-Waiver.

Failure of Contractor to provide insurance as herein required or failure of Exelon to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of this Article 15 shall not be deemed to be a waiver by Exelon of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Contractor to defend, indemnify, and hold harmless Exelon Parties as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Contractor and independent of the duty to furnish a copy or certificate of such insurance policies.

15.9 Exelon's Right to Purchase.

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

15.10 Contractor's Commencement of Work Without Insurance.

Commencement of Work without the required Certificates of Insurance, or without compliance with any other provision of this Agreement, shall not constitute a waiver by Exelon of any rights under this Agreement.

15.11 Contractor Obligations Not Limited.

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

**ARTICLE 16.
LIMITATION OF LIABILITY**

16.1 Limitation of Liability.

EXCEPT FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THE CONTRACT DOCUMENTS, IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL EXELON BE LIABLE TO CONTRACTOR FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING LOSS OF PROFITS OR REVENUE, OR COST OF CAPITAL.

CAP ON LIABILITY. EXCEPT FOR THE INDEMNIFICATION AND INSURANCE

OBLIGATIONS SET FORTH IN THE CONTRACT DOCUMENTS, THE AGGREGATE LIABILITY OF CONTRACTOR IN CONNECTION WITH A PURCHASE ORDER—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED THE TOTAL VALUE AMOUNT OF THE PURCHASE ORDER.

16.2 Contractor Liability.

Should Contractor Personnel sue Exelon for any injury allegedly received while performing Work under this Agreement and/or any Purchase Order, Contractor agrees to waive (to the extent of Contractor's indemnification obligations) in any suit filed by Exelon any limitation or cap imposed by any workers compensation Laws, workers compensation case law or Governmental Authority on the damages that Exelon can recover against Contractor in a third-party action by Exelon against Contractor.

**ARTICLE 17.
TERMINATION AND SUSPENSION**

17.1 Termination With Cause.

If either party breaches any provision of this Agreement or a Purchase Order (including the failure by Contractor to adhere to the performance standards set forth in this Agreement or the Purchase Order), the other party may give notice of such breach to the defaulting party in writing. If the breach is not cured within ten (10) days of receipt of such notice by the defaulting party, the defaulting party shall be in default hereunder and the non-defaulting party may elect to terminate the Agreement or the Purchase Order, or to continue the Agreement or the Purchase Order subject to receiving adequate assurances of performance from the defaulting party. In the event either party terminates this Agreement or a Purchase Order pursuant to this Section 17.1, Exelon shall not be required to make any payments to Contractor with respect to Services that have not been performed as of the date of termination. If the sum of all previous deposits and payments under this Agreement or the applicable Purchase Order with respect to the Work so terminated exceeds the amount owed to Contractor with respect to Services that have been performed as of the date of termination, the excess shall be immediately refunded to Exelon.

17.2 Termination or Suspension Without Cause.

Exelon may at any time on five (5) days notice to Contractor extend, suspend, or delay Contractor's performance of the Work or upon thirty (30) days' notice to Contractor terminate this Agreement or a Purchase Order for Exelon's convenience ("Termination for Convenience").

17.3 Suspension for Force Majeure.

Exelon may at any time extend, suspend or delay Contractor's performance of the Work if Exelon determines that Exelon's intended use of the Specific Project of which the Work is a part is or is likely to be delayed, changed, or stopped due to causes beyond the reasonable control of Exelon, including acts of God, fire, explosion, shortages of fuel, any act or failure to act of any civil or military authority, or strikes.

17.4 Termination Charges.

17.4.1 If Exelon terminates this Agreement or Purchase Order pursuant to Section 17.1, Contractor shall not be entitled to receive any further payments under this Agreement or a Purchase Order until all Work contemplated by this Agreement or Purchase Order has been fully performed as follows by Exelon or by some other person on behalf of Exelon. Exelon shall

have the right to prosecute the physical completion of the Work by means other than the use of Contractor, and in doing so Exelon shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. Contractor shall bear any extra expenses incurred by Exelon in completing the Work, including all increased costs. After all Work contemplated by this Agreement or a Purchase Order has been completed, Exelon shall calculate the total expenses for the completed Work. If the total expenses exceed any unpaid balance due Contractor, Contractor shall be liable to Exelon and shall pay the difference to Exelon on demand.

17.4.2 If Exelon terminates the performance of the Work or this Agreement in accordance with Section 17.2, or if Contractor terminates the performance of the Work or this Agreement pursuant to Section 17.1, Exelon will pay Contractor for all reasonable and unavoidable disbursements and expenses that Contractor has incurred or become obligated for prior to the date of the notice of termination. In no event shall the aggregate termination charges plus payment for the Work exceed the price of the Work set forth in this Agreement or the relevant Purchase Order. Payments by Exelon hereunder will be credited with prior amounts deposited or paid by Exelon under this Agreement or the Purchase Order. If the sum of all previous deposits and payments under this Agreement and salvage and/or resale with respect to the Work terminated exceeds the amount owed to Contractor hereunder, the excess shall be immediately refunded to Exelon. Contractor agrees to take reasonable steps to minimize termination expenses.

17.5 No Overhead Costs or Profits.

Whether Exelon terminates Contractor with or without cause or suspends Contractor's Work on a Specific Project, in no event shall Exelon be responsible for overhead costs or profits associated with Work not performed by Contractor.

17.6 Disputed Termination.

If Exelon terminates this Agreement or a Purchase Order pursuant to this Article 17, and Contractor disputes Exelon's right or grounds for such termination, the issue shall be resolved in accordance with the Dispute Resolution Procedure in Article 27. If it is ultimately found, or agreed to by the Parties, that Exelon had no right or grounds for such termination, then the termination by Exelon shall be conclusively presumed in law to have been Termination for Convenience, and the damages for which Exelon may be liable shall be no more than those specified in Section 17.4.2.

17.7 Contractor's Duties Upon Termination.

If Exelon terminates this Agreement or a Purchase Order, as provided in this Article 17, Contractor shall immediately discontinue the Work. If requested by Exelon, Contractor shall make every reasonable effort to cancel any existing orders, Subcontracts and contracts specified by Exelon upon commercially reasonable terms satisfactory to Exelon. Contractor, upon request, shall also deliver and assign to Exelon, and Exelon may at its discretion assume, any and all contracts, Subcontracts, purchase orders, and options made by Contractor in performance of the Work. Contractor shall deliver to Exelon true and correct originals thereof and all copies of the Contract Documents in Contractor's possession except that Contractor may retain photocopies of all relevant documents for its own files, and all other materials relating to governmental permits, orders placed, bills, invoices, lien waivers, and financial management under this Agreement. Notwithstanding any termination, Contractor shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress. No action taken by Exelon after termination shall prejudice any other rights or remedies of Exelon provided by law, by the Contract

Documents, or otherwise upon such termination. Should Exelon's termination of Contractor be partial, Contractor shall proceed to complete the portions of the Work, including Work pursuant to other Purchase Orders not terminated.

17.8 Resumption of Work.

If Exelon extends, delays, or suspends Contractor's performance under Sections 17.2 or 17.3, Contractor shall thereafter resume any Work extended, suspended, or delayed as soon as is practicable when directed to do so by Exelon. Any dates for performance by Contractor which are affected by an extension, delay, or suspension of Exelon shall be extended for a period not to exceed the time lost by reason of the extension, suspension, or delay. The payment schedules contained in this Agreement or Purchase Order shall be adjusted to reflect the effect of the extension, suspension, or delay on Contractor's rate of expenditures for performance hereunder, and performance schedules for Exelon's other obligations under this Agreement which are affected shall be extended for a period not to exceed the time lost by reason of the extension, suspension, or delay. Contractor shall also be entitled to an increase in the price for the Work affected by an extension, delay, or suspension directed by Exelon to cover Contractor's incremental direct costs by reason of the extension, suspension, or delay and for which Contractor is not compensated by any price adjustment provisions under this Agreement. Contractor shall take all reasonable steps to minimize these costs.

17.9 Temporary Deferment of Services.

Contractor shall, without cost to Exelon, temporarily defer the execution of any portion of the Work when such action may be necessary in the opinion of Exelon for the proper advancement of the work of other contractors or for other work by Exelon, when the deferment may be accomplished without unreasonable interference with Contractor's schedule or arrangements, or when the Work interferes or threatens to interfere with the operation of Exelon's facilities.

17.10 Subcontractors.

Contractor agrees to bind every Subcontractor to whom it subcontracts any of the Work by the provisions of this Article 17 as far as applicable to the Work of the Subcontractor.

**ARTICLE 18.
PATENTS AND INFRINGEMENTS**

18.1 Indemnity.

Contractor shall pay all royalties and license fees which may be payable on account of performance or use of any of the Work. Upon receipt by Exelon of a claim notice, Exelon will provide Contractor with prompt written notice of such claim. Contractor shall at its own expense defend any claim brought by others against an Exelon Party or its successors and assigns because the performance of the Work infringes, or is alleged to infringe directly or contributorily, rights in, to, or under patents or inventions, copyrights, trade secrets, and other proprietary rights or is the basis for a claim of unfair competition resulting from similarity in design, trademark, or appearance of goods by reason of the sale or use of the Work; and Contractor shall indemnify and hold the Exelon Parties harmless from any liability of any nature or kind (including all costs or expenses (including attorneys' fees)), arising out of any infringement or alleged infringement or claim of unfair competition. In addition, Contractor shall indemnify and hold the Exelon Parties harmless against, and shall pay all awards of damages assessed and all costs of suit adjudged

against such Exelon Party in such suits or proceedings, provided such Exelon Party promptly gives Contractor such information and assistance as is readily available to such Exelon Party, and authority as may be necessary to enable Contractor so to do. At Exelon's or such Exelon Party's expense (as determined between Exelon and such Exelon Party), an Exelon Party may be represented by and actively participate through its own counsel in any such suits and proceedings if it so desires.

18.2 Remedies.

In case any part of the Work is held in any such suit to constitute infringement and its use is enjoined, Contractor shall, or at any time after a claim of infringement arises, Contractor shall (at Contractor's option), promptly either (1) secure for Exelon such permission as will enable Contractor to secure the suspension of any injunction, or (2) replace at Contractor's own expense such part of the Work with an adequate non-infringing part or modify it so that it becomes non-infringing, but only if the replacement or modification does not adversely affect Exelon's acquisition costs, operating or maintenance costs, construction or operating schedules, operation or maintenance procedures, public relations, employee relations, any license or permit affecting Exelon's property or any other matter relating to Exelon's property or its operation. As an alternative to options (1) and (2) above, if both parties agree (such agreement or rejection shall be at each party's sole discretion), then Contractor may refund the entire price of the Work affected.

THIS ARTICLE CONSTITUTES CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY INFRINGEMENT INDEMNITY CLAIMS BROUGHT AGAINST EXELON.

ARTICLE 19.
LABOR RELATIONS

19.1 Notice of Potential Labor Disruption.

Contractor shall immediately notify Exelon, in writing, of any labor dispute or anticipated labor dispute that may reasonably be expected to affect or delay the performance of the Work. Written notice shall include, at a minimum, identification of the organizations involved in the dispute together with any relevant information regarding the dispute and its background.

19.2 Jurisdictional Disputes.

If any union jurisdictional disputes arise involving Work performed by Contractor, Contractor shall be held solely responsible for pursuing all available remedies under applicable state and federal law, or under any existing labor agreements, to remedy the dispute and to ensure limited disruption in the performance of the Work or the work being performed by other Exelon contractors.

19.3 Prevent Stoppage or Slowdown.

Contractor shall be responsible for taking any and all actions reasonably necessary, which may include filing charges with the National Labor Relations Board and pursuing injunctive relief in federal and/or state courts, to prevent or end any stoppage or slowdown of the Work prior to, during, or subsequent to any labor dispute or activity. Further, Contractor shall arrange, if necessary, for a substitute or supplementary work force in the event of a stoppage or slow down in the Work. Contractor shall be responsible to Exelon for any delay, disruption, obstruction, or hindrance in the Work, and damages and extra costs resulting

from such disputes. Contractor shall not make any claim for a modification to Contractor's price or the Milestone Dates as a result of any labor dispute or activity.

19.4 Indemnification.

Contractor shall indemnify, hold harmless and, at the Exelon Parties' request, defend Exelon Parties from all claims, liability, damages, and expenses (including reasonable attorneys' fees) arising out of (i) a labor dispute, or (ii) claims under a collective bargaining agreement or project labor agreement.

19.5 Contractor's Rights.

Subject to Exelon's right to approve Subcontractors, nothing in this Agreement shall limit Contractor's right to negotiate or execute labor agreements on terms and conditions within Contractor's sole discretion consistent with Contractor's responsibilities and obligations under this Agreement or any Purchase Orders.

ARTICLE 20
CONTRACTOR'S PERSONNEL

20.1 Competent Workers.

Contractor shall employ and cause each Subcontractor to employ competent, appropriately trained, and experienced employees for the Work to be performed. Contractor shall have full responsibility for the conduct of all employees employed on or in connection with the Work (including employees of any Subcontractor) and will ensure that there is adequate, daily supervision of all Work. Contractor shall be familiar with and observe established and accepted labor practices, procedures, and project agreements.

20.2 Qualification.

Contractor Personnel shall maintain all professional qualifications, licenses, permits, certifications and skills and appropriately complete all training required by applicable Laws or advisable to perform the Work.

20.3 Compliance with Exelon GPPMA

20.3.1 In connection with a Purchase Order and except as otherwise expressly provided by Exelon, if Contractor (1) performs (or plans to perform) any craft Work at an Exelon generating station property ("Exelon Generating Site") or (2) hires (or plans to hire) any craft labor to perform Work at an Exelon Generating Site, then Contractor (or if applicable, such Subcontractor performing the Work and/or hiring craft labor) shall execute a Letter of Assent, which represents such signatory's agreement to the terms and conditions set forth in the Exelon Generation Company, LLC Generating Facility Amendment to the General Presidents Project Maintenance Agreement, dated April 14, 2005 (the "Exelon GPPMA") prior to commencement of Work at such Exelon Generating Site.

20.3.2 Contractor shall perform the Work described above in Section 21.3.1 pursuant to the Exelon GPPMA and terms, conditions and covenants contained therein, including employing, or contracting with, individuals represented by the appropriate craft unions.

20.3.3 If Contractor breaches the provisions of Section 21.3, Contractor shall indemnify, defend upon request and hold harmless Exelon Parties from all claims, liability, damages, and expenses (including reasonable attorneys' fees) arising out of such breach.

20.4 Use of Contractor Personnel

20.4.1 Contractor shall comply with Exelon's Use of Contractor Policy, HR AC 70, as it may be amended from time to time. For purposes of this Section 20.4, all terms with initial capitalization that are not otherwise defined herein, shall be as defined in Policy HR AC 70.

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

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

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

20.4.5 Based upon such executed Third Party Personnel Acknowledgements and prior to commencement of any Work by any such proposed new Contractor Personnel, Contractor shall provide to Exelon's Designated Representative a written notice that identifies the names (and if possible the former Exelon Employee identification number) of Contractor Personnel assigned to provide Work to Exelon who identify themselves as a former employee of one of the Exelon Entities or a Retiree of one of the Exelon Entities (a "Notice of Former Employees/Retirees"). Notwithstanding any other provision of this Agreement, Exelon reserves the right, to request additional information about any Contractor Personnel, to reject any proposed Contractor Personnel, and to request the removal (with or without replacement) of any or all Contractor Personnel from performing for Exelon hereunder at any time at its sole discretion. In the

event Exelon reasonably rejects any proposed Contractor Personnel or requests the removal of any Contractor Personnel, Contractor shall promptly remove such Contractor Personnel from providing Work to Exelon and provide a suitable replacement that meets all requirements of the Contract Documents. In the event Exelon requires the removal of any Contractor Personnel, Contractor shall also ensure a prompt and smooth transition of all knowledge, information and data from such Contractor Personnel to his or her replacement.

20.4.6 In addition to any other audit rights under the Agreement, Contractor agrees that Exelon, or any of its authorized representatives acting on Exelon's behalf, may upon reasonable request, audit Contractor's files and records regarding the utilization of Contractor Personnel hereunder, including all TPAs. This section shall survive termination of this Agreement, and any Purchase Order issued for a specific project hereunder, for a period of six (6) years.

20.5 Background Examinations.

20.5.1 Contractor will be required to conduct background investigations in accordance with Exelon's security procedures for all of its personnel who will (1) have access to any Exelon or its affiliates' assets, including buildings, properties and/or customer information, and/or (2) have contact with any Exelon or its affiliates' customers. Such investigations must be completed prior to the first day upon which Contractor and its personnel are to provide the Services. This background investigation will be a minimum requirement and 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 Contractor 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 address, 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). 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.

20.5.2 Further Exelon business unit or department background investigations and examinations of Contractor Personnel may include, unless prohibited by applicable Law: (1) license or professional certification verifications; (2) physical and psychological examinations, including random drug testing; (3) education verifications; and (4) any other background investigations and examinations required by Law or Exelon policies that apply to Exelon personnel and other contractors.

20.5.3 Exelon may require Contractor 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, Contractor 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 Contractor (1) immediately removes and replaces such Contractor Personnel with someone who has met the minimum requirements set forth above, and (2) continues to perform the Services in accordance with this Agreement.