

**MASTER TERMS AND CONDITIONS  
FOR CONSULTING AND PROFESSIONAL SERVICES**

**Between**

**[Insert legal name of Contractor entity] (“Contractor”)**

**and**

**Exelon Business Services Company, LLC**

**[Insert if applicable “as agent for {Insert legal name of Exelon entity}”]**

**Dated as of [ ], 20 [ ]**

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These Master Terms and Conditions for Consulting and Professional Services establish the standard contractual terms and conditions under which Exelon Business Services Company, LLC (“Exelon”) and its Affiliates may, from time to time, purchase Consulting and/or Professional Services from Contractor and its Affiliates.

## ARTICLE 1. DEFINITIONS

As used in these Terms and Conditions, the following terms will 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 with respect to both Parties, also includes those entities that now or hereafter own, are owned by or under common control of a Party, where “control” means at least a fifty percent (50%) ownership interest.

“**Background Investigation**” means a Contractor-performed background investigation of Contractor Personnel who will perform Work for Buyer which meet the requirements set forth in Section 22.5 of these Terms and Conditions.

“**BES Cyber System**” has the definition given to it by NERC, and includes any installed software and electronic data, and communication networks that support, operate, or otherwise interact with the bulk electric system operations that are identified by Buyer or its Affiliate as a BES Cyber System.

“**Blanket Purchase Order**” (or “**Blanket Contract**”) means a written agreement between the Parties setting forth general commercial and technical terms for repetitive orders of the same Materials or Services against which multiple Purchase Order Releases may be issued. A Blanket Purchase Order or Blanket Contract is not a “Purchase Order” as defined in these Terms and Conditions and does not authorize the commencement of Work or submission of invoices by the Contractor.

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

“**Buyer**” means Exelon or the Affiliate that issues a particular Purchase Order.

“**Buyer Data**” means any data or information in whatever media (a) provided to Contractor by Buyer under these Terms and Conditions, or a Purchase Order issued thereunder; or (b) provided by a third-party contractor of Buyer, customer of Buyer or Buyer’s Designated Representative or other Person designated to provide such data to Contractor under these Terms and Conditions or a Purchase Order issued hereunder.

“**Buyer-Furnished Property**” means communications equipment, computer equipment designs, dies, drawings, equipment, ID cards and passes, keys, molds, patterns, tools, tooling, and other materials supplied or paid for by Buyer for Contractor’s use in completing the Work.

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

**“Buyer Parties”** means Buyer, its Affiliates, their members, officers, directors, employees, agents, representatives, successors, and assigns.

**“Buyer Personnel”** means Buyer’s directors, officers, employees, consultants, independent contractors, agents and representatives.

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

**“Compensable Delay”** means only the following events and only if they impact the critical path of the Work: (1) material delays attributable to Buyer; and (2) Material Change ordered in the Work not due to Contractor’s fault.

**“Confidential Information”** means all information marked or identified as “confidential,” “proprietary,” or with words of similar import, Buyer Data, Personally Identifiable Information, and all information which relate to past, present, and future research, development, and business activities of Buyer and its Affiliates, including inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, system plans, flow charts, source codes, algorithms, procedures, data and other proprietary information of Buyer, regardless of the form or medium contained or stored in (including hard copy, electronic, or digital form). Such Confidential Information will include any such information not generally known by the trade or public, even though such information has been previously disclosed to one or more third parties pursuant to confidentiality agreements, disclosure agreements or other agreements or collaborations entered into by Buyer. Confidential Information will also mean any information owned in whole or in part by Contractor or a third party that has been entrusted to Buyer by Contractor or a third party under obligations of confidentiality.

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

**“Consulting Services”** means Services such as the review, assessment, study, advisement, evaluation or provision of information on a project, process or strategy provided by a Contractor with experience and expertise in the relevant field. Staff Augmentation or other Services that are similar to or in the same nature as those performed by Buyer’s employees within the normal course of Buyer’s business are not Consulting Services.

**“Contract Documents”** means the Purchase Order, any Change Orders thereto, these Terms and Conditions, the contract between a TSP and Contractor and any other documents identified as Contract Documents herein, or in such Purchase Order or Change Orders.

**“Contract Price”** means the price set forth in the Purchase Order (as may be adjusted pursuant to any subsequent Change Orders) to be paid by Buyer to Contractor for the Work, including any incentives or bonuses.

**“Contractor”** means the Party identified as such in these Terms and Conditions or its Affiliate, which is named in the Purchase Order as Contractor and which is contractually responsible to perform the Work pursuant to the Purchase Order incorporating these Terms and Conditions.

**“Contractor’s Designated Representative”** means the individual or individuals designated by the Contractor who will provide the general administration of these Terms and Conditions in connection with, and will be Contractor’s field representative in all matters relating to, the Purchase Order.

“**Contractor Parties**” means Contractor, its Subcontractor, and their respective officers, directors, employees, agents, representative, subsidiaries, successors, or assigns.

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

“**Critical Cyber Assets**” has the definition given it by NERC, and includes, computers, including installed software and electronic data, and communication networks that support, operate, or otherwise interact with the bulk electric system operations.

“**Day(s)**” means any calendar day.

“**Disaster Recovery Plan**” means a disaster recovery plan set forth in Section 3.7 (Disaster Recovery and Business Continuity).

“**Disputes**” means disputes between the Buyer and Contractor arising under or out of the applicable Contract Documents.

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

“**Drawings**” means the final drawings to be provided by Contractor in accordance with the Scope of Work.

“**Drug**” or “**Drugs**” includes any (1) chemical substance whose manufacture, use, possession, purchase, or sale is prohibited by Law, and (2) legal chemical substances (whether a narcotic, controlled substance, prescribed drug, or over-the-counter medication) obtained illegally, taken for purposes of abuse, or the use of which would impair the user’s physical or cognitive abilities.

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

“**Environmental Laws**” means any Laws pertaining to the protection of the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.* (“CERCLA”); 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 Emergency Planning & Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.* (“EPCRA”) 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.

“**FERC**” means the U.S. Federal Energy Regulatory Commission or its successor.

“**Final Completion**” means the date for completion of the Work listed in the Purchase Order or Project Schedule. In the event of a conflict between the date of Final Completion listed in the Purchase Order and the Project Schedule, the date listed in the Project Schedule will govern.

**“Final Payment”** means payment of all moneys due but not previously paid to Contractor under a Purchase Order after receipt by Buyer of Contractor’s final invoice.

**“Force Majeure”** means the occurrence of a fire, flood, earthquake, elements of nature or act of God, lock-outs and strikes, riot, civil disorder, terrorist act, rebellion or revolution, government embargo, quarantine, sanction, order, or other mandate; government inaction or delay in granting a required permit or approval; change in Law; Nuclear Incident, Precautionary Evacuation or other catastrophic event beyond the reasonable control of a Party that delays or prevents the party, directly or indirectly, from performing its obligations under a Purchase Order, provided that (i) the non-performing Party is without fault in causing or failing to prevent such occurrence, and (ii) such occurrence could not have been avoided by reasonable precautions and cannot be circumvented through the use of commercially reasonable alternative sources, workaround plans, or other means.

**“Governmental Authority”** 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, electric reliability organization or regional reliability 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 chemicals, flammable substances, explosives, radioactive materials, asbestos, hazardous wastes or substances, crude oil or any fraction thereof, refined or partially refined petroleum products, and any other contaminants, wastes, pollutants, or materials in any physical form that may pose a present or potential threat to human health and safety or the environment, including material falling within the definitions of “hazardous substance,” “hazardous constituent,” “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 Laws 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”).

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

**“Key Personnel”** means Contractor Personnel who possess critical knowledge or skills for performance of the Work and whose loss might delay or disrupt performance of the Work.

**“Labor Dispute”** means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

**“Law” or “Laws”** means all laws, statutes, codes, ordinances, rules, regulations, lawful orders, applicable guidance documents from regulatory agencies, judicial decrees and interpretations, standards, requirements, permits and licenses, including Environmental Laws, Health and Safety Laws, tax laws and applicable tax treaties, building, labor 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.

**“Managed Service Provider”** or **“MSP”** means a third-party engaged by Buyer to manage and contract with Persons to supply Buyer with Staff Augmentation Work.

**“Material”** means all raw 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 and/or the contract between a TSP and Contractor.

**“Material Information”** means information pertaining to Contractor intellectual property incorporated into the Work, before and after Final Completion, required by Buyer in order to permit Buyer to secure or maintain in effect any license or permit for the Site or facility for which the Work is intended, or otherwise to use or obtain the full benefits of the Work.

**“Milestone Dates”** means the date of Substantial Completion, the date of Final Completion, and any other dates identified as such in the Purchase Order or Project Schedule for Contractor's completion of specific components of the Work.

**“NERC”** means the electric reliability organization known as the North American Electric Reliability Corporation or its successor, or a regional reliability organization with authority delegated by NERC, including without limitation the Reliability First Corporation, Northeast Power Coordinating Council, Florida Reliability Coordinating Council, Midwest Reliability Organization, SERC Reliability Corporation, Southwest Power Pool, RE, Texas Regional Entity, and the Western Electricity Coordinating Council.

**“NRC”** means the U.S. Nuclear Regulatory Commission, its predecessor the Atomic Energy Commission, and its successors.

**“Nuclear Special Terms and Conditions”** means the terms and conditions attached hereto and incorporated herein as Exhibit E.

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

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

**“Personally Identifiable Information”** means any name, number, or other information that may be used, alone or in conjunction with any other information, to identify, distinguish, trace or assume the identity of a specific person, including any (a) names, initials, mother's maiden name, address, email address, password, account number, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, or any similar identification, (b) personal, financial, or

healthcare information, credit card information, bank account number, credit card number or debit card number, (c) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation, (d) unique electronic identification number, address, or routing code, (e) telecommunication identifying information or access device (as defined in 18 U.S.C. §1029(e)), or (f) personal preferences, demographic data, marketing data, or any other identification data. For the avoidance of doubt, Personally Identifiable Information includes all “nonpublic personal information,” as defined under the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d), and “Personal Data” as that term is defined in EU Data Protection Directive (Directive 95/46/EEC) on the protection of individuals with regard to processing of personal data and the free movement of such data.

**“Policies and Procedures”** means all applicable rules, policies, Site requirements, and procedures of Buyer and any of its Affiliates, including those in Exhibit B, which have been or will be provided to Contractor and/or posted on a secure website as designated by Buyer.

**“Professional Services”** means the performance of a particular business function of a professional nature for the Buyer, including actuarial studies, advertising, audit services, engineering design and evaluation, expert witnesses, financial services, graphic design, legal services, medical or laboratory services, marketing, recruiting and staffing, regulatory work, testing, and classroom and on-line training. The function can be inside or outside the scope of the Buyer’s routine operations. Professional Services are typically performed at the Contractor’s business location.

**“Project Schedule”** means the schedule mutually agreed to by Buyer and Contractor for the performance of the various elements of the Work identified in the Purchase Order. The Project Schedule will be one of the Contract Documents.

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

**“Purchase Order”** means a written or electronic document issued by Buyer to Contractor incorporating by reference these Terms and Conditions and which upon acceptance by Contractor creates a contract for the performance of the Work. As used herein, the term Purchase Order includes documents that may be variously referred to as “Contracts” when issued for Services or as or as “Purchase Order Releases” or Contract Releases” when issued against a Blanket Purchase Order or Blanket Contract.

**“Purchase Order Amount”** or **“Purchase Order Value”** (POA or POV) means the Contract Price in the case of a fixed price, lump sum Purchase Order, or a mutually agreed estimate of the total amount to be invoiced under a Purchase Order that includes, in whole or part, time-and-material or other variable pricing. The POA or POV is for finance and accounting control purposes and is not a cap on the final Contract Price for the Work.

**“Purchase Order Release”** or **“Release”** means a Purchase Order issued against a Blanket Purchase Order and incorporating the provisions of the Blanket Purchase Order.

**“Retiree”** means an individual who formerly performed services for Exelon or its subsidiaries, was classified on Exelon’s payroll as a regular or temporary employee, and who previously received, is eligible to receive or is currently receiving benefit payments under a Retirement Plan or Savings Plan.

**“Retirement Plan”** means any tax-qualified pension plan sponsored or maintained by Exelon

Corporation or any of its subsidiaries.

**“Safety-Related”** means Work intended for, or performed on, systems, structures, components, procedures, processes and controls of a nuclear generating facility that are relied upon to remain functional during and following design-basis events and must be manufactured and/or performed in accordance with applicable NRC and nuclear industry standards for Safety-Related Materials and Services.

**“Savings Plan”** means the Exelon Corporation Employee Savings Plan or any other tax- qualified savings plan maintained by Exelon or any Subsidiary.

**“Scope of Work”** (or **“Statement of Work”**) means the detailed description of the Work to be provided by Contractor, typically broken out into specific tasks with assigned Milestone Dates, as set forth in the Purchase Order and other Contract Documents.

**“Services”** means all of the labor, supervision, administration and other services identified in the Scope of Work and required to complete the Work set forth in the Purchase Order for Consulting and/or Professional Services.

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

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

**“Specifications”** means a highly detailed technical description of the Materials or Services to be provided by Contractor that includes the final characteristics, dimensions, tolerances, performance requirements, and certification and testing requirements, and references codes, drawings, procedures, documents, other particulars for the Work as applicable, which will be set forth in the Purchase Order or referenced and attached thereto as a Contract Document.

**“Staff Augmentation”** means Work performed by Contractor Personnel who are employed and paid by the Contractor or a Subcontractor where Buyer may direct the Contractor Personnel’s work and the methods for completing the Work.

**“Subcontract”** means the contract(s) between the Contractor and Subcontractor relating to Subcontractor’s performance of the Work.

**“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. Subcontractor shall include a Technical Service Provider.

**“Submittals”** means all Specifications, Drawings, sketches, reports, shop drawings, diagrams, illustrations, schedules, and other data or information, which are prepared or assembled by or for Contractor and submitted by Contractor to Buyer pursuant to the Contract Documents.

**“Substantial Completion”** means the point in time at which the entire or designated portion of the Work is sufficiently complete such that Buyer can occupy and utilize the Work 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 Buyer.

“**Suspension for Convenience**” means any extension, suspension, or delay of Contractor’s performance of the Work for Buyer’s convenience.

“**Technical Service Provider**” or “**TSP**” means any Person under written contract with Contractor to provide services related to an applicable Scope of Work involving Contractor as an administrator or manager of energy efficiency programs for ComEd. Technical Service Provider may also be referred to as a “**Trade Ally**.”

“**Terms and Conditions**” means these Master Terms and Conditions for Materials and Services between Contractor and Buyer together with all appendices, exhibits, schedules, and attachments hereto, all as such may be amended, restated, or supplemented from time to time as permitted herein.

“**Termination for Convenience**” means termination of a Purchase Order, in whole or part, for Buyer’s convenience.

“**Test**” means any test, inspection or witness point.

“**Work**” means all Material, Services, and Submittals required to be provided by Contractor under the Purchase Order and its associated Contract Documents including re-work and warranty work.

“**Work Product**” means the intellectual property and any associated IP Rights resulting from the performance of the Work. The term Work Product excludes Buyer’s, Contractor’s, Subcontractors’ and third parties’ intellectual property and any associated IP Rights developed independently of the performance of the Work, even if incorporated into the Work.

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

## ARTICLE 2. SCOPE AND FORMATION OF CONTRACT

### 2.1 No Requirements Contract or Affiliate Liability.

These Terms and Conditions do not create a requirements contract. Buyer reserves the right to use its own resources and to employ other contractors to perform any and all work at any or all of its Sites. Subject to the provisions of Section 25.8 (Assignment), no Affiliate will have any right, interest, obligation, or liability under Purchase Orders issued by any other Affiliate as a result of these Terms and Conditions. Contractor will not hold, nor attempt to hold, Exelon or any Affiliate liable for the acts, omissions, or breaches of any other Affiliate. No breach or default of a Purchase Order referencing these Terms and Conditions by an Affiliate will constitute a breach or default of any Purchase Order issued by another Affiliate.

### 2.2 Issuance and Acceptance of Purchase Orders.

During the term of these Terms and Conditions, Buyer may request Contractor to perform Work by issuing a Purchase Order to Contractor signed by Buyer’s Designated Representative or other authorized representative of Buyer. Contractor will not commence Work without receipt of a Purchase Order. The Purchase Order will specify, at a minimum, the: (i) other Contract Documents, (ii) Scope of Work, (iii) Submittals; (iv) Contract Price, (v) time for performance and Milestone Dates, (vi) Buyer’s and Contractor’s Designated Representatives, (vii) liquidated damages, if any, and (viii) agreed upon terms or conditions that deviate from these Terms and Conditions, if any. Upon the request of Buyer,

Contractor will sign and return the Purchase Order to Buyer's Designated Representative. Contractor's signature on the Purchase Order will constitute Contractor's unconditional acceptance of the Purchase Order and these Terms and Conditions. Contractor's commencement of performance of the Work will also be deemed an effective mode of acceptance of the Purchase Order and these Terms and Conditions. Buyer may also 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 will follow Buyer's published implementation guidelines and be fully compliant with no less than the ANSI X-12 004010 EDI version.

### **2.3 Applicability of These Terms and Conditions to Purchase Orders.**

These Terms and Conditions will apply to each Purchase Order unless specifically modified in the Purchase Order. These Terms and Conditions 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 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, or any attempt by Contractor to vary in any degree any of the terms in the Contract Documents are objected to by Buyer and will not be binding upon Buyer unless specifically assented to in writing by Buyer's Designated Representative.

### **2.4 Priority of Contract Documents.**

In the event of any conflict or inconsistency between the documents comprising the Contract Documents, the authority of the individual documents for each respective Purchase Order, relative to the other document, is, in descending order of priority: Change Orders; the Project Schedule; the Purchase Order; Blanket Purchase Orders; Special Terms and Conditions; Software License Agreements; these Terms and Conditions; Drawings; Specifications; and any other Contract Documents. Notwithstanding the foregoing, the several documents forming the Contract Documents will be taken as mutually explanatory of one another; however, in case of ambiguities, discrepancies, or inconsistencies, this priority of documents will govern.

## **ARTICLE 3. STANDARDS FOR PERFORMANCE**

### **3.1 Standards.**

Contractor will perform the Work as set forth in the Purchase Order and other Contract Documents. Contractor will furnish all the Materials and Services necessary for the complete, proper and timely completion of the Work, including, providing the necessary management, technical and other qualified personnel, home office support, supervision, labor, equipment, supplies, and transportation, except as explicitly excluded in the Contract Documents. Contractor will perform all Work assigned to it in a competent manner consistent with the ordinary degree of skill and care required for the applicable business, craft, industry, profession or trade.

### **3.2 Schedule of Performance.**

Contractor will complete all Work on or prior to the Milestone Dates for such completion set forth in the Contract Documents or the Project Schedule, or, if no Milestone Date is specified, in a

commercially reasonable period of time. **TIME IS OF THE ESSENCE IN COMPLETING WORK BY A MILESTONE DATE.** Delays or possible delays in performance of the Work or in the completion of Milestone Dates will be reported promptly after Contractor's discovery thereof to Buyer. Buyer and other contractors retained by Buyer may be performing work directly or indirectly affected by Contractor's Project Schedule, and Contractor agrees to use best efforts in cooperating with other contractors to support Buyer's overall operations schedules. Except as provided in Article 12 (Acceleration, Compensable Delay and Force Majeure), Contractor acknowledges and agrees that no extension to the date for Final Completion or other Milestone Dates identified in the Purchase Order or Project Schedule will be granted unless agreed to in writing by Buyer and Contractor.

### **3.3 Final Acceptance.**

No Work will be deemed accepted by Buyer until the earlier of Final Payment to contractor in accordance with Section 5.8. Except as expressly provided herein, Final Acceptance will not waive any rights and remedies that Buyer has, or release Contractor from any duties and obligations that Contractor has, under the Contract Documents, including, but not limited to, breach of contract and warranty.

### **3.4 Site Investigations.**

Contractor will inspect the Site where the Work is to be performed and conditions under which the Work is to be executed and completed prior to Contractor's acceptance of the Purchase Order, including soil conditions, any and all physical parameters necessary to build any structures, and groundwater conditions, including estimates of flow direction and volume, the nature, location, and type of contamination likely to be encountered, the location of any and all above or below ground utilities, approaches to the Sites and the space available for work areas, storage and temporary buildings. Except as expressly provided in the Purchase Order, Contractor will not rely on any investigations performed by or information provided by Buyer relating to the conditions at the Site. No reasonably discoverable condition existing at the Site at the time of Contractor's opportunity for inspection will be deemed to adversely affect Contractor's ability to perform the Work in accordance with the terms of the Contract Documents. Any understandings or representations concerning such conditions made before a Purchase Order is issued will not be binding on Buyer unless they are expressly stated in the Purchase Order.

### **3.5 Permits, Fees and Notices.**

3.5.1 Unless otherwise specified in the Contract Documents, Contractor, at its expense, will obtain in advance of performing the Work, and maintain during performance of the Work, all necessary licenses, permits, and authorizations required of Contractor, the Contractor Personnel, Subcontractors and any other Person(s) to perform the Work under Contractor's direction, and Contractor will be responsible for performance of the Work in accordance with the provisions of such licenses, permits, and authorizations. Any costs, fines, penalties, awards, damages, or other liabilities (including but not limited to fines assessed by any Governmental Authority) associated with any violations of this Section 3.5 will be borne and paid by Contractor.

3.5.2 Contractor will promptly tender to Buyer copies of all notices received from Governmental Authorities.

3.5.3 Contractor will post all notices and postings required by Law at the worksite, including, without limitation, those for employees.

### **3.6 Compliance with Laws and Buyer Policies and Procedures.**

3.6.1 All Work performed hereunder and all Work and Work Product generated in connection therewith will fully comply with all applicable Laws. Contractor will 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 Policies and Procedures. Contractor acknowledges that it has received or been provided electronic access to copies of the Buyer's Policies and Procedures listed in Exhibit B. Buyer reserves the right to revise or update the Policies and Procedures from time to time, with or without notice to Contractor. At the request of Buyer, Contractor will acknowledge in writing which Policies and Procedures of Buyer it has reviewed.

3.6.2 Contractor and Buyer each agree to fully comply with the Laws of the United States relating to the exportation of commodities or technical data, including but not limited to 15 CFR Parts 730 et seq., 10 CFR Part 110 and 10 CFR Part 810, as issued from time to time, or any successor Laws. In the event of any ambiguity or inconsistency between the provisions of this Section 3.6.2 and any other Section of these Terms and Conditions, this Section 3.6.2 will be controlling. The receiving Party agrees to: (1) ensure that all receiving Party individuals who may have access to technical data that is controlled for export by the regulations noted above are generally or specifically authorized or licensed under such regulations; (2) to report to the Party sharing export-controlled information the nationality of any recipients of such information where required for purposes of reports to governmental agencies; and (3) to not retransfer any export-controlled information without the prior authorization of the sharing Party. The receiving Party also agrees to contractually obligate any third party recipients of such information to comply with such regulations.

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

3.6.4 Service Organization Control ("SOC") Reports. In the event that Work being performed subject to these Terms and Conditions involve contracting out a business function which was previously performed in-house by Exelon ("Outsourcing Services" or "Outsourced Services"), Contractor will be required to provide on an annual basis, at Contractor's sole expense, one of the following Service Organization Control Reports ("SOC") by an auditor of national reputation when applicable to the Service provided to Buyer: (i) SOC Report 1 Type 2 Report – Applicable to Services that are relevant to the Buyer's financial statements and controls over financial reporting; or (ii) SOC Report 2 Type 2 Report – Applicable to Services where the AICPA Trust Services Principles and Criteria of Security, Availability, Processing Integrity, Confidentiality, or Privacy are relevant.

### **3.7 Disaster Recovery and Business Continuity.**

Contractor will provide back-up, 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 will include the following:

3.7.1 Back-up and store Buyer 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. Buyer Data must be encrypted when being transmitted or stored outside of Buyer's computer systems and network. Buyer Data must be classified according to Buyer's required levels of classification.

3.7.2 Conduct incremental and full back-ups (in accordance with the Disaster Recovery Plan) to capture data, and changes to data used in connection with the Work. Backed up data must be encrypted.

3.7.3 Develop, maintain and submit a Disaster Recovery Plan to Buyer 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 will assume responsibility for providing the services in accordance with the Disaster Recovery Plan.

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

### **3.8 Compliance with Legal Holds.**

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

3.8.2 In the event records, documents, or data placed on legal hold are required for review by Buyer's legal department, Contractor, at its sole cost and expense, will work diligently to export all relevant records, documents, or data in a form that is reasonably reviewable.

### **3.9 Conflicts of Interest.**

#### **3.9.1 Representations and Warranties**

3.9.1.1 Except as disclosed to, and waived by, Buyer in accordance with Subsection 3.10.2, Contractor represents and warrants that, to the best of its knowledge after exercising reasonable diligence, the execution of any Purchase Order issued subject to these Terms and Conditions will not create a Conflict of Interest.

3.9.1.2 Contractor further represents and warrants that during the term of this Purchase Order and for a period of one (1) year after the expiration or termination of any Purchase Order issued subject to these Terms and Conditions, Contractor will not undertake to perform services for any Person

that creates a Conflict of Interest, without first disclosing such Conflict of Interest and obtaining Buyer's informed, written waiver as provided below.

3.9.1.3 Contractor's representations and warranties under this Section 3.10 will be ongoing and will survive the expiration or termination of this Agreement.

### 3.9.2 Notices and Procedures

3.9.2.1 Contractor will disclose any known Conflicts of Interest to Buyer in writing (the "Conflicts Notice") prior to Contractor's acceptance of a Purchase Order, and, thereafter, as required by Section 3.10.1.2.

3.9.2.2 Contractor's disclosure of any known Conflicts of Interest is a condition precedent to the effectiveness of any Purchase Order.

3.9.2.3 Buyer may request at any time that Contractor provide its written certification that no known Conflicts of Interest exist that have not been disclosed to and waived by Buyer.

3.9.2.4 If disclosure is required by Subsection 3.10.1.2, Contractor will not accept a contract or agree to perform services for or on behalf of such Person unless the Conflict of Interest has been waived in writing by Buyer.

3.9.2.5 Buyer will notify Contractor whether, in its sole discretion, it will waive the Conflict of Interest on or before the later of ten (10) Business Days after receipt of the Conflict Notice, or five (5) Business Days after the date it receives additional information, if requested from Contractor, to determine (the "Decision Period"). The failure of Buyer to provide notice during this period will constitute a denial of such waiver.

3.9.2.6 At any time during the first ten (10) Day Decision Period, Buyer may request from Contractor, and Contractor will promptly supply to Buyer, such additional information as Buyer reasonably may determine necessary to make its decision. All discussions between the Parties and any information provided by Contractor to Buyer or by Buyer to Contractor under this provision will be treated and protected as Confidential Information, unless excluded from such consideration by the terms of this Agreement.

3.9.3 If Contractor fails to disclose a known Conflict of Interest, or undertakes to perform services for any Person that creates a Conflict of Interest without first obtaining a waiver from Buyer, Buyer may elect to terminate any or all Purchase Orders incorporating these Terms and Conditions in accordance with Section 17.1 (Termination for Cause).

### 3.10 Subcontractor Compliance.

Contractor will require that all its Subcontractors comply with all requirements of Sections 3.6, 3.7, 3.8, and 3.9 of this Article 3. If Contractor is unable to provide to the Buyer data obtained or generated by its Subcontractors pursuant to this Article 3, Contractor will grant the Buyer the right to collect such data directly from Contractor's Subcontractors. To facilitate the transfer of such data, Contractor will contractually obligate its Subcontractors to provide such data to Buyer.

## ARTICLE 4. WARRANTIES

### 4.1 Warranties for Performance of Work.

Contractor warrants that the Services furnished to Buyer under these Terms and Conditions will (1) comply with the Specifications contained in the Contract Documents, (2) be performed in accordance with the then prevailing applicable Laws, and industry standards and practices, (3) be free and clear of all security interests, Liens, encumbrances or claims of Contractor, Subcontractors and third-party suppliers, and (4) free of any claim of infringement, misappropriation, unfair competition or violation of any third party right, including IP Rights.

### 4.2 Remedies.

If any of the Services do not comply with the foregoing warranties and Buyer notifies Contractor within two (2) years (or such other period as specified in the Contract Documents, or provided by a manufacturer, supplier, or Subcontractor) after the date Buyer has accepted the Services, then Contractor will (at its sole expense) promptly re-perform the nonconforming Services. All such re-performed Services and repairs or replacement of any materials, equipment and other personal and real property damaged by the non-conforming Services or otherwise adversely affected by the performance of the Work (“Other Material”) will be performed on a schedule to be agreed upon by Buyer. The warranty for any such re-performed Services pursuant to Section 4.1 and for any repaired or replaced Other Materials will be two (2) years from the date of Buyer’s acceptance of such re-performed Services or the repair or replacement of the Other Materials, or for the duration of the unused warranty period if such period is longer.

### 4.3 Inspection.

Buyer’s inspection, testing, acceptance, payment, or use of any Services will not affect the warranties and obligations of Contractor under these Terms and Conditions or the Contract Documents, and such warranties and obligations will survive any such inspection, testing, acceptance, payment, or use.

### 4.4 Buyer’s Right to Perform.

In the event of Contractor’s failure to re-perform the Services, in accordance with the terms hereof, Buyer, after notice to Contractor, may correct any deficiencies in the Services, or may purchase replacement Services. Buyer 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 will and does hereby assign to Buyer the benefits of any warranties provided by Subcontractors and will perform its responsibilities so that such warranties remain in full force and effect. Such assignment will not relieve Contractor of its warranty obligations to Buyer under these Terms and Conditions or the Contract Documents.

**ARTICLE 5.  
CONTRACT PRICE, INVOICING AND PAYMENT**

**5.1 Contract Price.**

In consideration for the Contractor's acceptable performance of the Work as set forth in the Purchase Order and other Contract Documents, Buyer will pay to Contractor the Contract Price provided in the Purchase Order. Unless otherwise expressly provided in the Purchase Order, the Contract Price will be a fixed price and include all costs associated with performance of the Work and compliance with the Contract Documents, including, but not limited to, labor and associated employment benefits, Materials, transportation and delivery charges, insurance, costs to obtain Permits or IP Rights necessary for Contractor's performance, and Buyer's use, of the Work, and all other fees, duties or charges. If a Purchase Order specifies a Contract Price on a time-and-materials or other variable price basis, the Purchase Order will set forth a Purchase Order Amount and, unless otherwise agreed upon in the Contract Documents, Contractor will not incur costs that exceed this estimated amount except upon written notice to Buyer and Buyer's prior written consent to be documented in a Change Order. Except as otherwise expressly provided in the Purchase Order, the Contract Price will be the sole and exclusive consideration for Contractor's satisfactory performance of the Work.

**5.2 Taxes.**

Except for United States state sales or use taxes or similar taxes that apply to the Work, the Contract 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 Work, and Buyer will not be required or obligated to reimburse Contractor for any taxes or similar expenses which may arise or be incurred in connection with performance of the Services. The invoice will separately list taxable and nontaxable charges where applicable. Unless Buyer provides Contractor an exemption certificate or notifies Contractor that Buyer will pay such taxes directly to the applicable Department of Revenue, then state sales and use tax, where applicable, will be billed on the invoice if Contractor is authorized by applicable Law to collect such tax. To the extent Contractor fails to bill Buyer pursuant to this Section 5.2, then Contractor will be responsible for all penalties and interest payments associated with such failure (whether assessed to Buyer or Contractor) and the payment of such tax if Section 5.7.5 is applicable. Buyer will reimburse Contractor for any interest, penalties, or expenses Contractor may incur as a result of Buyer providing Contractor with an exemption certificate. Contractor will promptly furnish Buyer with all information Buyer requests for the purpose of determining the amount of any tax liability under these Terms and Conditions. Buyer will 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. At the request of Buyer, Contractor will prepare, execute, and deliver to Buyer a Federal Form W-9 or the equivalent thereof. Contractor will comply with the reporting requirements of all Governmental Authorities, and, upon the request of Buyer, will provide proof that Contractor has complied with such reporting requirements.

**5.3 Submission of Invoices.**

Unless otherwise specified in the Purchase Order, Contractor will submit invoices as follows: (i) if Work is complete in less than thirty (30) Days, then Contractor will submit an invoice within thirty (30) Days after completion of Work; or (ii) if Work is completed in more than thirty (30) Days, then Contractor will submit an invoice every thirty (30) Days for Work performed during the previous thirty (30) Day period. Unless otherwise specified in the Purchase Order, Contractor will submit the original invoice to Buyer's Accounts Payable Department via Email at [AccountsPayableIncomingInvoices@constellation.com](mailto:AccountsPayableIncomingInvoices@constellation.com), PO Box 17456, Baltimore, MD 21297, Tel. 410-

470-2000, and one duplicate of each invoice will be sent to Buyer's Designated Representative. Vendors can check the status of their invoices or a summary of Exelon payments here: <https://supply.exeloncorp.com/supply/apinquiry/>.

#### **5.4 Invoice Format.**

Each invoice will include Contractor's name, address, Purchase Order number, release number (if applicable), Exelon catalogue identification number (if applicable) and corresponding unit price, date, and 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 will 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 will be charged to Buyer without Buyer's prior written approval. Overtime hours will be billed as such rather than as a greater number of regular hours. Each invoice will also identify all authorized expenses incurred during the time period, and will be accompanied by supporting documentation. All charges made pursuant to a Change Order issued in accordance with Article 12 (Changes in the Work), herein, will be shown separately on Contractor's invoices, and will not be included with amounts applicable to the Contract Price as originally specified in the Purchase Order. All invoices covering additions to or credits due under these Terms and Conditions or a Purchase Order will refer to the specific Change Order issued by Buyer with respect to the addition or credit, and will not be honored unless this reference is included. Invoices that Buyer deems inaccurate or incomplete, in Buyer's sole discretion, may be returned to Contractor for correction and re-submittal. Contractor's final invoice for each Purchase Order will be marked "FINAL INVOICE," in any cover letter, forwarding email, and on each page of the final invoice, and an additional copy of this final invoice will be submitted to Buyer's Designated Representative.

#### **5.5 Payments and Retainage.**

Subject to Section 5.9 (Payment Not Waiver of Contractor's Breach), Buyer will pay all undisputed invoices within forty-five (45) Days after receipt of the invoice. Buyer may retain either (1) ten percent (10%) of each invoice, or (2) the amount of the final invoice until close-out documentation is received and deemed by Buyer, in its sole discretion, to be complete.

#### **5.6 Reports.**

5.6.1 If requested by Buyer, Contractor will submit to Buyer 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 will be specified by Buyer, showing the progress made by Contractor toward the completion of the Work to the date of each report. Each report will include an updated Project Schedule, a list of Contractor Personnel performing Work at the Site, and a discussion of Contractor's planned activities for the next month. Contractor will continuously monitor, report, forecast, and control the progress of the Work in accordance with the Project Schedule. Contractor will provide increasing scheduling detail as the Work progresses. Contractor's reporting will be sufficiently detailed to present to Buyer an accurate status of the Work's Project Schedule, variances from the Project Schedule and reasons therefor, and corrective action planned.

5.6.2 If Buyer requires a report pursuant to Section 5.6.1 for Work being performed on a cost-plus or time-and-material basis (or any variation thereof), Contractor will submit a weekly report to Buyer. Each report will include, in addition to the information required by Section 5.6.1, the following: (1) time sheets listing Contractor Personnel, with occupation descriptions and number of regular and

overtime hours worked; (2) a list of all chargeable tools and equipment showing hours used; and (3) a list of chargeable material and quantities.

#### **5.7 Grounds for Not Paying Invoices.**

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

5.7.1 Material breach by Contractor of any of its obligations under these Terms and Conditions or Purchase Order, including the costs to Buyer 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;

5.7.2 A notice of intent to lien or lien placed on the Work or Buyer's property because of Contractor's failure to properly pay Subcontractors;

5.7.3 Reasonable evidence that the Services will not be completed by the Milestones specified in the Purchase Order or Project Schedule;

5.7.4 Unsubstantiated or unsupported amounts billed by Contractor;

5.7.5 Contractor's failure to submit an invoice within one hundred and eighty (180) Days of the applicable submission provisions of Section 5.3 (Submission of Invoices); or

5.7.6 Buyer's purchase of insurance pursuant to Section 15.9 (Buyer's Right to Purchase).

#### **5.8 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 will be made within forty-five (45) Days after receipt by Buyer of Contractor's final invoice ("Final Payment"), subject, however, to the condition precedent that Final Payment will not be due until Buyer accepts the Work Acceptance by Contractor of Final Payment will constitute a waiver of all claims against Buyer under the Purchase Order for which the final invoice is issued.

#### **5.9 Payment Not Waiver of Contractor's Breach.**

No partial payment or Final Payment made by Buyer will be construed as a waiver of any breach hereof by Contractor, forfeiture of Buyer's right to inspect and accept Work and its documentation, 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, or preclude Buyer from pursuing any other rights or remedies it may have under these Terms and Conditions, in law or equity.

#### **5.10 Right to Setoff.**

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

**ARTICLE 6.  
LIQUIDATED DAMAGES**

The Parties may agree to apply liquidated damages to a Purchase Order as specified in such Purchase Order. In such case, in the event of a delay by Contractor in achieving Substantial Completion as specified in the Purchase Order or Project Schedule, for any reason which is not excused under Section 12.3 (Compensable Delay), Contractor will pay to Buyer as liquidated damages the amounts specified in the Purchase Order without prejudice to Buyer's other rights and remedies under these Terms and Conditions or the Purchase Order or at Law and not as a penalty. The Parties agree that, if such Liquidated Damages are specified, it is because it would be extremely difficult and impracticable to ascertain and fix the actual damages Buyer would suffer should Contractor delay in completing the Work by the Milestones Dates identified in the Purchase Order or Project Schedule. It is acknowledged and agreed by the Parties that the liquidated damages in the Purchase Order relate solely to Contractor's delay in completing the Work as set forth in the Contract Documents and to no other obligation or duty of Contractor.

**ARTICLE 7.  
TERM**

These Terms and Conditions will be effective as of the Effective Date. Notwithstanding anything herein to the contrary, the termination of these Terms and Conditions and / or any Blanket Purchase Order incorporating these Terms and Conditions will not affect or excuse the performance of either Party pursuant to any then effective Purchase Order(s), except as otherwise provided in Article 18 (Termination And Suspension).

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

**8.1 Submittals.**

Contractor's Submittals will include all information and documentation in Contractor's and Subcontractor's possession which are required by Buyer for the design, construction, licensing, maintenance, quality assurance, operation, and/or use of the Work. Any Submittals required by the Contract Documents to be submitted to Buyer for review prior to commencement of any stage of the Work will be submitted by Contractor without unreasonable delay, and any Work affected thereby which started prior to written acceptance by Buyer will be at Contractor's risk. Review by Buyer will not relieve Contractor from fulfilling all of Contractor's obligations under these Terms and Conditions or the Contract Documents, including obligations relating to design and detailing. As far as practicable, each drawing Submittal will bear a cross-reference note referring to the sheet number or numbers of Buyer's drawings showing the same Work. All Submittals will become the property of Buyer, may be used by Buyer in connection with the installation, startup, maintenance, operation, and repair of the Work, and may be transferred by Buyer to any transferee of the Work.

**8.2 Samples and Mock-Ups.**

If Buyer has requested a sample or mock up of all or any portion of the Work, Contractor will not commence the associated Work until Buyer has received such samples, or reviewed such mock up, and acknowledged in writing its acceptance of such samples or mock-up. Any sample or mock-up brought on site by Contractor will be clearly marked as a sample 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 will be made without

the written consent of Buyer; provided, however, no sample or mock-up will be installed or delivered as the final Work.

**ARTICLE 9.  
BUYER-FURNISHED PROPERTY**

All Buyer-Furnished Property remains Buyer's property, and Contractor agrees to maintain a log upon receipt of such Buyer-Furnished Property which will be used for final disposal or return of such property based on instructions furnished by Buyer. Contractor will at its expense maintain all such Buyer-Furnished Property in its possession in good condition and repair and indemnify Buyer for all damage or loss to such property (other than ordinary wear and tear) and for liability arising as a result of fraudulent, illegal, inappropriate, or unauthorized use of such Buyer-Furnished Property by Contractor Personnel including, but not limited to, Buyer Photo ID, keys, parking pass, documents, laptop and the like, either during the course of the assignment of any Contractor Personnel to perform the Work or after termination of such Contractor Personnel. Contractor agrees that use of any such Buyer-Furnished Property will not affect the warranties set forth in these Terms and Conditions or the Contract Documents.

**ARTICLE 10.  
PERFORMANCE OR PROCUREMENT PROVISIONS**

In the event of termination of these Terms and Conditions pursuant to Article 18 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 Purchase Order or Project Schedule.

**ARTICLE 11.  
CHANGES IN THE WORK**

**11.1 Buyer Changes.**

Buyer will have the right to order changes to be made in the Work through a written Change Order, including changes in the Specifications, Drawings, designs, and time and place of delivery. No Change Order that has the effect of changing the cost to Buyer or Contractor (whether because of a change in the prices for the Services, the amount or the scope of the Services, or otherwise), or materially affecting the time for performance, warranties, or other obligations of the Parties (each a "Material Change") will be binding upon the Parties unless the same is approved in writing by Buyer and Contractor.

**11.2 Claims for Equitable Adjustments.**

If a Change Order results in a Material Change, the Contract Price and/or other affected provisions of the Contract Documents will be equitably adjusted by agreement between Contractor and Buyer (an "Equitable Adjustment"). Equitable Adjustments may result in either an increase or decrease in the Contract Price, time for performing the Work, or change to other material obligations of the Parties under the Contract Documents, as appropriate, based on the nature of the Material Change. Equitable Adjustments will be reflected in the Change Order, except where the Parties expressly agree in the Change Order to address the issue of an Equitable Adjustment after the fact, e.g., due to emergent circumstances. If Contractor has any claim against Buyer for an Equitable Adjustment, notice of each such claim will be submitted promptly in writing to Buyer. Each claim will include Contractor's detailed proposal therefor. Unless otherwise agreed to in writing by Buyer, Contractor will bear the costs of preparing such detailed proposal and any claim by Contractor will be deemed waived unless made in

writing within ten (10) Business Days after the occurrence of the event which precipitated the claim. If Contractor reasonably believes that Buyer has made a change in the Work without issuing a written direction, Contractor will give Buyer written notice within seventy-two hours after such purported change, and if Contractor intends to request an Equitable Adjustment, it will follow the claims procedure described herein. If the Contractor fails to provide timely notice, any subsequent request for increase in the Contract Price or for an extension of time will be waived, and the Parties agree that Buyer will be prejudiced as a result of late notice because of its inability to mitigate and/or substantiate any resulting costs or time extensions contemporaneously. Any resulting Equitable Adjustment will be reflected in a revised Change Order. If the Parties cannot agree on an Equitable Adjustment within forty-five (45) Days of Buyer's receipt of Contractor's proposal, either Party may refer the matter to dispute resolution under the provisions of Article 24 (Dispute Resolution) herein. Notwithstanding anything to the contrary, no claim will be allowed if asserted after Final Payment.

**ARTICLE 12.  
ACCELERATION, COMPENSABLE DELAY, AND FORCE MAJEURE**

**12.1 Acceleration of Delayed Work.**

If Contractor is delayed at any time for any reason during the execution and completion of any portion of the Work, other than reasons attributable to Force Majeure, then, if requested by Buyer, Contractor will employ additional personnel and Material as are necessary to accelerate the progress of the Work to meet the Milestone Dates identified in the Purchase Order or Project Schedule.

**12.2 Non-Compensable Delay.**

Buyer will not pay and Contractor will bear Contractor's increased costs related to Contractor's delay and accelerated performance where delay is due to Contractor's fault.

**12.3 Compensable Delay Claim.**

If Contractor's need to accelerate or delay its Work is caused by a Compensable Delay, then subject to Contractor submitting a written claim to Buyer, Buyer will pay Contractor for Contractor's increased costs resulting from the Compensable Delay and issue a Change Order extending the Project Schedule as necessary. Unless otherwise agreed between the Parties, such payment will be on a reimbursable basis at the rates set out in the Purchase Order. Payment of Contractor's claim for its increased costs and extension of the Project Schedule will be Contractor's sole remedy for such a Compensable Delay.

**12.4 Force Majeure.**

12.4.1 Neither Party will be in breach of a Purchase Order where its failure to perform or its delay in performing any obligation is due to a Force Majeure.

12.4.2 The Party claiming Force Majeure will notify the other Party promptly of any failure to perform or delay in performing due to Force Majeure and will provide an estimate as soon as practicable of the time when the obligation will be performed.

12.4.3 The Party claiming Force Majeure will notify the other Party in writing as soon as practicable after the beginning of the occurrence and immediately at the termination of such occurrence.

12.4.4 The Party claiming Force Majeure will exercise due diligence in time and effort in order to restore normal conditions and re-establish working schedules as soon as the Force Majeure has ceased.

12.4.5. The Parties will negotiate an Equitable Adjustment to the Project Schedule reflecting time lost and not recovered through acceleration of the Work not to exceed the period of the Force Majeure.

12.4.6 Buyer will be responsible for any increased costs resulting from Buyer's request for Contractor to accelerate performance of the Work to recover the Project Schedule due to Force Majeure.

**ARTICLE 13.  
LOSS OR DAMAGE**

**13.1 Risk of Loss.**

Risk of loss or damage to the Work or any property of Buyer in the custody of Contractor will remain with Contractor until Buyer accepts the Work. If any loss of or damage to the Work or Buyer's property in Contractor's custody occurs prior to the date of acceptance, Contractor will at its sole expense promptly repair or replace the portion of the Work or property affected.

**ARTICLE 14.  
CONTRACTOR'S INDEMNIFICATION**

**14.1 Indemnification.**

Contractor will, to the fullest extent permitted by Law, indemnify, defend upon request, and hold harmless Buyer Parties against all losses, claims, damages, expense (including reasonable attorneys' fees and other defense costs) and liabilities sustained or incurred by the Buyer Parties for any damage, harm, loss or injury of any kind, direct or indirect, to any property or Person (including death), including without limitation, claims for injuries or loss to employees of the Buyer Parties, Contractor and/or any Subcontractor, arising out of any act, omission, conduct, negligence or breach by Contractor Parties and/or arising out of or in any manner associated with the Work under these Terms and Conditions or any contact with or encountering of any property, equipment, vehicles, Sites or personnel of the Buyer Parties, regardless of whether any such liability, damage, loss or injury is alleged to be caused by, result from or arise out of the negligence, fault or other liability of the Buyer Parties or any other party to be indemnified. Contractor will further, to the fullest extent permitted by Law, indemnify, defend Buyer Parties upon request, and hold Buyer Parties harmless against any loss sustained or incurred by Buyer Parties (including reasonable attorneys' fees and expenses) for any breach or nonperformance by Contractor or its Subcontractors of any portion of these Terms and Conditions. Buyer Parties' right to indemnification will specifically include loss or damage to Buyer Parties' property. Buyer Parties' right to indemnification under this Section 14.1 will include, but not be limited to, legal fees and/or expenses associated with obtaining legal advice, prosecuting or defending any legal claim regarding insurance coverage, breach of these Terms and Conditions, contractual indemnity under these Terms and Conditions, or defense of any lawsuit filed by anyone for any claim relating either to the Work, or performance thereof, or these Terms and Conditions. Contractor Indemnification of the Buyer Parties will include any costs or expenses (including reasonable attorneys' fees and other costs) incurred by any Buyer Parties subpoenaed or otherwise required to participate in any proceeding pertaining to or involving a claim brought by any third party or Governmental Authority against or involving Contractor Parties.

#### **14.2 Limitations on Indemnity.**

Except as may be otherwise provided by applicable Law, Buyer Parties' right to indemnification will not be impaired or diminished by any act, omission, misconduct, negligence or breach of a Buyer Party or any employee or agent of a Buyer Party who may be alleged to have contributed thereto and Buyer Parties' indemnification right will apply whether or not negligence or liability is alleged in whole or in part against a Buyer Party except to the extent it is finally adjudicated that any liability is caused by or resulting from the sole negligence of a Buyer Party. To the extent any Law may prohibit any application of all or any part of the indemnity obligations in these Terms and Conditions, it is the intent of the Parties that such provisions are severable, and will 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 will indemnify, hold harmless, and upon request, defend Buyer Parties from any claim, liability, damage, expense, penalties, suit, or demand (including advance of reasonable attorneys' fees and defense costs) for claims by Governmental Authorities or others (including Subcontractors, Contractor Personnel, and Buyer Personnel) that (1) Contractor Parties failed to comply with any Law, including without limitation failure of Contractor or any Subcontractor, or any employee thereof, to pay wages, compensation, taxes, duties, or fees or to comply with employee safety orders, safe place, or employment Laws, or (2) any of the Buyer Parties is an employer, co-employer or joint employer of any Contractor Personnel; or (3) Buyer Parties failed to comply with any Law by reason of any negligence or default by Contractor Parties.

#### **14.4 Pollution Indemnification.**

Contractor agrees to indemnify, hold harmless, and upon request, defend Buyer Parties from any claim, liability, damage, expense, suit, or demand (including reasonable attorneys' fees and court costs) for damage, harm, loss or injury of any kind arising out of actual or alleged contamination, pollution, exposure to any harmful substance, or public or private nuisance, including any request, demand or order that the Buyer Parties test for, monitor, clean up, contain, remove, treat or in any way respond to the existence or threat of any such contamination, pollution, harmful substance or nuisance, arising out of or in any manner related to, based upon, or in connection with, any operations, performance, breach, course or Scope of Work, act, omission, or presence upon, use, or other encountering of any property, Sites, personnel, vehicles, equipment, or operations of Buyer Parties or others by or involving Contractor Parties in connection with these Terms and Conditions or a Purchase Order.

#### **14.5 Settlement of Claims.**

Contractor will provide Buyer with reasonable advance, written notice, of the settlement of any claims pertaining to or arising out of the Work and will include Buyer as a released party if requested by Buyer.

#### **14.6 Contractor Cooperation.**

Contractor agrees to cooperate fully with Buyer in any investigation, claim or proceeding involving Buyer, whether such investigation, claim or proceeding is initiated by Contractor Personnel, Buyer Personnel, a Governmental Authority, or Buyer.

**ARTICLE 15.  
INSURANCE**

**15.1 Required Coverages.**

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

15.1.1 Workers compensation insurance (“WCI”) with statutory limits, as required by the state in which the Work is to be performed.

15.1.2 Employer’s liability insurance (“ELI”) with limits of not less than one million dollars (\$1,000,000.00) each accident for bodily injury by accident, one million dollars (\$1,000,000) each employee for bodily injury by disease, and one million dollars (\$1,000,000) policy limit.

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

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

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

15.1.6 The liability limits under 15.1, 15.1.3 and 15.1.4 may be met with any combination of primary and Excess or Umbrella Insurance policy limits totaling five million dollars (\$5,000,000).

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

15.1.8 If Contractor will have access to Buyer’s computer networks or Critical Cyber Assets, Cyber/Network Security Insurance with a limit of not less than ten million dollars (\$10,000,000) per occurrence. Coverage must include liability for financial loss resulting from or arising out of acts, errors, or omissions in the performance of contractual obligations assumed by Contractor under this Agreement: (i) breaches of security; (ii) violation or infringement of any right to privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; (iii) breach of contract in connection with a network security or data privacy event; (iv) data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and (v) participation in a denial of service attack on a third party, or arising out of acts,

errors, or omissions, in rendering services, with a minimum limit of ten million (\$10,000,000) each and every claim and in the aggregate. Such insurance must address all of the foregoing, without limitation, if caused by an employee of the Contractor or an independent contractor working on behalf of the Contractor in performing services under this contract. Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world.

15.1.9 If any policy is written on a claims made basis, the retroactive date may not be advanced beyond the effective date of the Purchase Order and coverage will be maintained in full force and effect for three (3) years after Final Completion, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

15.1.10 Contractor will be responsible for any deductibles or self-insured retentions applicable to the insurance provided in compliance with Article 15.

15.1.11 Insurance coverage provided by Contractor under this Article 15 will not include any endorsement limiting coverage available to Buyer which is otherwise required by this Article 15.

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

15.1.12.1 Be primary and non-contributory to any other insurance afforded to Buyer;

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

15.1.12.3 Provide for a waiver of all rights of subrogation which Contractor's insurance carrier might exercise against Buyer, excluding PLI; and

15.1.12.4 Any Excess or Umbrella liability coverage will not require contribution before it will apply.

## **15.2 Additional Coverages.**

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

## **15.3 Additional Insured Endorsement.**

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

## **15.4 Evidence of Insurance.**

Contractor will provide evidence of the required insurance coverage and file with Buyer a Certificate of Insurance acceptable to Buyer prior to commencement of the Work. Contractor will

provide written notification to Buyer if the policies required by this Article 15 are canceled, allowed to expire or the limits in any manner reduced with at least thirty (30) Days prior written notice (ten (10) Business Days in the case of nonpayment of premium). Buyer may inspect any or all policies of insurance at any time.

**15.5 Waiver of Subrogation.**

Contractor will waive all rights of subrogation against Buyer, its agents, officers, directors and employees under those policies, excluding PLI, procured in accordance with these Terms and Conditions.

**15.6 Ratings.**

All insurance coverage will be provided by insurance companies acceptable to Buyer 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 Terms and Conditions.**

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

**15.8 Non-Waiver.**

Failure of Contractor to provide insurance as herein required or failure of Buyer to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of this Article 15 will not be deemed to be a waiver by Buyer of any of the terms and conditions of these Terms and Conditions, nor will they be deemed to be a waiver of the obligation of Contractor to defend, indemnify, and hold harmless Buyer 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 Buyer's Right to Purchase.**

In the event of any failure by Contractor to comply with the insurance requirements of these Terms and Conditions, Buyer may, without in any way compromising or waiving any right or remedy at law or in equity, upon five (5) Business Days written notice to Contractor, purchase such insurance, at Contractor's expense, provided that Buyer will have no obligation to do so and if Buyer will do so, Contractor will not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such costs incurred by Buyer will 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 these Terms and Conditions, will not constitute a waiver by Buyer of any rights under these Terms and Conditions.

**15.11 Contractor Obligations Not Limited.**

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

**ARTICLE 16.  
LIMITATION OF LIABILITY**

**16.1 Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, BUYER WILL NOT BE LIABLE TO CONTRACTOR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER.

**16.2 Contractor Liability.**

Should Contractor Personnel sue Buyer for any injury allegedly received while performing Work under these Terms and Conditions and/or any Purchase Order, Contractor agrees to waive in any suit filed by Buyer any limitation or cap imposed by any Laws, case law or Governmental Authority on the damages that Buyer can recover against Contractor in a third party action by Buyer against Contractor.

**ARTICLE 17.  
TERMINATION AND SUSPENSION**

**17.1 Termination With Cause.**

If either Party breaches any provision of the Purchase Order or other Contract Documents (including the failure by Contractor to adhere to the performance standards set forth in these Terms and Conditions 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) Business Days of receipt of such notice by the defaulting Party, the defaulting Party will be in default hereunder and the non-defaulting Party may elect to terminate the Purchase Order effective upon delivery of written notice of such termination to the defaulting Party within ten (10) Business Days of such failure to cure, or to continue the Purchase Order subject to satisfaction of any assurances of performance from the defaulting Party. In the event either Party terminates a Purchase Order pursuant to this Section 17.1, Buyer will 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 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 will be immediately refunded to Buyer.

**17.2 Termination For Convenience.**

Buyer may, upon not less than thirty (30) Days prior written notice to Contractor, terminate a Purchase Order or other Contract Documents, in whole or part, for Buyer's convenience

### 17.3 Suspension of Work.

17.3.1 Suspension for Non-compliance with Law or Terms and Conditions. In the event that it is determined by Buyer or a Governmental Authority that the Work fails to comply with any Law or with any of these Terms and Conditions (including but not limited to Work performed by Contractor Personnel not deemed to be qualified) and Buyer is required to re-inspect and correct such Work, Buyer will have the right to direct that all Work be suspended and direct that the Work be performed in a manner that complies with such Law or Governmental Authority and the Contractor will be liable to Buyer for all direct costs associated with such inspections including but not limited to excavation and re-performance of the Work, if required, to inspect or meet applicable Law.

17.3.2 Suspension for Convenience. Buyer may at any time on written notice to Contractor direct a Suspension for Convenience of all or part of the Work. Buyer will pay Contractor for all reasonable and unavoidable disbursements and expenses that Contractor has incurred or become obligated for as a result of a Suspension for Convenience. .

17.3.3 Contractor's Duties upon Suspension. Upon receipt of Buyer's notice of suspension, Contractor will immediately stop all Work under the Purchase Order and immediately cause its suppliers and Subcontractors to suspend such Work, unless Contractor is directed otherwise in the notice of suspension.

### 17.4 Termination Charges.

17.4.1 If Buyer terminates a Purchase Order pursuant to Section 17.1 (Termination With Cause), Contractor will not be entitled to receive any further payments under such Purchase Order until all Work has been fully performed by Buyer or by some other Person on behalf of Buyer, as follows. Buyer will have the right to complete the Work by means other than the use of Contractor, and in doing so Buyer will have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. Contractor will bear any extra expenses incurred by Buyer in completing the Work, including all increased costs. After all Work has been completed, Buyer will calculate the total expenses for the completed Work. If the total expenses exceed any unpaid balance due Contractor, Contractor will be liable to Buyer and will pay the difference to Buyer on demand.

17.4.2 If Buyer terminates the Purchase Order in accordance with Section 17.2 (Termination For Convenience), or if Contractor terminates the Purchase Order pursuant to Section 17.1 (Termination With Cause), Buyer 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 will the aggregate termination charges plus payment for the Work exceed the Contract Price of the Work set forth in the relevant Purchase Order and Change Orders thereto. Payments by Buyer hereunder will be credited with prior amounts deposited or paid by Buyer under the Purchase Order. If the sum of all previous deposits and payments under the Purchase Order and salvage and/or resale with respect to the Work terminated exceeds the amount owed to Contractor hereunder, the excess will be immediately refunded to Buyer. Contractor agrees to take reasonable steps to minimize termination expenses.

### 17.5 No Overhead Costs or Profits.

Whether Buyer terminates the Purchase Order with or without cause or suspends Contractor's Work, in no event will Buyer be responsible for overhead costs associated with Work not performed by Contractor, for any profits Contractor would have earned if it had completed Work, or for any special, consequential, incidental, or indirect damages.

### **17.6 Disputed Termination.**

If Buyer terminates these Terms and Conditions or a Purchase Order pursuant to this Article 17, and Contractor disputes Buyer's right or grounds for such termination, the issue will be resolved in accordance with the Dispute Resolution Procedure in Article 24 (Dispute Resolution). If it is ultimately found, or agreed to by the Parties, that Buyer had no right or grounds for such termination, then the termination by Buyer will be conclusively presumed in law to have been Termination for Convenience, and the damages for which Buyer may be liable will be no more than those specified in Section 17.4.2.

### **17.7 Contractor's Duties Upon Termination.**

If Buyer notifies Contractor that it is terminating a Purchase Order, as provided in this Article 17, Contractor will immediately discontinue the Work, and Buyer will be entitled to take possession of the Site and all or any part of the Work paid for by Buyer. If requested by Buyer, Contractor will make every reasonable effort to cancel any existing orders, Subcontracts and contracts specified by Buyer upon commercially reasonable terms satisfactory to Buyer. Contractor, upon request, will also deliver and assign to Buyer, and Buyer may at its discretion assume, any and all contracts, Subcontracts, purchase orders, and options made by Contractor in performance of the Work. Contractor will deliver to Buyer 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 these Terms and Conditions. Notwithstanding any termination, Contractor will take such steps as are reasonably necessary to preserve and protect Work completed and in progress. No action taken by Buyer after termination will prejudice any other rights or remedies of Buyer provided by Law, by the Contract Documents, or otherwise upon such termination. Should Buyer's termination of Contractor be partial, Contractor will proceed to complete the portions of the Work, including Work pursuant to other Purchase Orders not terminated.

### **17.8 Resumption of Work.**

If Buyer extends, delays, or suspends Contractor's performance under Section 17.3 (Suspension of Work), Contractor will thereafter resume such Work as soon as is practicable when directed to do so by Buyer. Any dates for performance by Contractor which are affected by an extension, delay, or suspension of Buyer will be extended for a period not to exceed the time lost by reason of the extension, suspension, or delay. The payment schedules contained in these Terms and Conditions or Purchase Order will 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 Buyer's other obligations under these Terms and Conditions which are affected will be extended for a period not to exceed the time lost by reason of the extension, suspension, or delay. With the exception of extensions, suspensions, or delays resulting from a Force Majeure event, Contractor will also be entitled to an increase in the Contract Price for the Work 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 in the Contract Documents. Contractor will take all reasonable steps to minimize these costs.

### **17.9 Temporary Deferment of Services.**

Contractor will, without cost to Buyer, temporarily defer the execution of any portion of the Work when such action may be necessary in the opinion of Buyer for the proper advancement of the work of other contractors or for the installation of machinery, equipment, or other work by Buyer, 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 Buyer's Sites.

#### **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. CONTRACTOR'S INTELLECTUAL PROPERTY AND INFRINGEMENTS**

#### **18.1 Buyer's License to Use Intellectual Property Incorporated in the Work.**

Unless otherwise agreed to in writing by Buyer, in the event and to the extent that any of the Work produced by Contractor contains any intellectual property to which Contractor or a third-party have IP Rights, Contractor hereby grants to Buyer an irrevocable, perpetual, paid-up, non-exclusive, royalty-free, world-wide license to use Contractor's and third-party's intellectual property incorporated in the Work. Contractor will pay all royalties and license fees which are necessary for Contractor's performance of the Work and Buyer's use of any third party IP Rights incorporated into the Work. Except as provided in this Section 18.1, Buyer will receive no right or interest in and to Contractor's or third party's intellectual property.

#### **18.2 Buyer's Access to Intellectual Property Used in Performance of the Work.**

Subject to the provisions of Article 23 (Confidentiality), Contractor will make available to Buyer Material Information. Buyer and Contractor agree that this Material Information provided will only be for Buyer's internal use but may be provided to third parties engaged by Buyer to assist with use of or to provide service to Buyer for or upon the Work. Any third party having access to such Material Information will agree in writing to be bound to the nondisclosure and use provisions substantially similar in all material respects to those in Article 28. Buyer may disclose Contractor's intellectual property to any Governmental Authority for the purposes set forth herein, provided that Buyer will provide Contractor with notice of Buyer's intent to disclose Contractor's intellectual property and cooperate fully with Contractor to secure a protective order governing such disclosure.

#### **18.3 Indemnity Against Infringement.**

Contractor will at its own expense defend any claim brought by others against a Buyer or its successors and assigns because the performance of the Work infringes, or is alleged to infringe, directly or contributorily, on IP 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 will indemnify and hold the Buyer harmless from any liability of any nature or kind (including advancement of all costs or expenses including attorneys' fees), arising out of any infringement or alleged infringement or claim of unfair competition. In addition, Contractor will indemnify and hold the Buyer harmless against, and will pay all awards of damages assessed and all costs of suit adjudged against Buyer in such suits or proceedings, provided Buyer promptly gives Contractor such information and assistance as is readily available to Buyer, and authority as may be necessary to enable Contractor so to do. At Buyer's expense, Buyer may be represented by and actively participate through its own counsel in any such suits and proceedings if it so desires.

#### **18.4 Remedies.**

In case any part of the Work is held in any such suit to constitute infringement, misappropriation or violation of any IP Rights, or its use is enjoined at any time after a claim of infringement arises, in addition to its indemnification obligations herein, Contractor will (at Buyer's option), promptly either

(1) secure for Buyer the perpetual right to continue the use of such part of the Work by procuring for Buyer a royalty-free license or such other permission as will enable Contractor to secure the suspension of any injunction, (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 Buyer's acquisition costs, operating or maintenance costs, construction or operating schedules, operation or maintenance procedures, public relations, employee relations, any license or permit affecting Buyer's property or any other matter relating to Buyer's property or its operation, or (3) refund the entire Contract Price relating to the Work affected.

**ARTICLE 19.  
CONTRACTOR'S PERSONNEL**

**19.1 Competent Workers.**

Contractor will employ and cause each Subcontractor to employ an adequate number of competent, appropriately trained, and experienced Contractor Personnel for the Work to be performed. Contractor will have full responsibility for the conduct of all Contractor Personnel employed on or in connection with the Work and will ensure that there is adequate, daily supervision of all Work. Contractor will be familiar with and observe established and accepted labor practices, procedures, and agreements applicable to the Work. Continuous coordination between Buyer and Contractor is essential in order to provide for efficient operations and ensure the safety of all assigned personnel. Contractor's Designated Representative will be responsible for overseeing the Work and administering any Purchase Order issued under these Terms and Conditions. In addition, the Contractor's Designated Representative must be proficient in written and spoken English and able to translate to assigned personnel as needed. Except as otherwise provided in the Purchase Order, Contractor's Designated Representative will 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 Buyer's Designated Representative, which will not be unreasonably withheld.

**19.2 Qualification.**

Contractor Personnel will maintain all professional qualifications, licenses, permits, certifications and skills and appropriately complete all training required by applicable Laws or necessary for the performance of the Work. Contractor will only employ, and will take reasonable steps to ensure that its Subcontractors only employ, persons who are lawfully eligible to perform the Work. Contractor will obtain, verify, and maintain evidence of the identity and employment eligibility under applicable U.S. Laws for all Contractor and Subcontractor Personnel performing Work at Sites. This will include compliance with the U.S. Citizenship and Immigration Service's I-9 process.

**19.3 Compliance with Exelon GPPMA**

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

19.3.2 Contractor will perform the Work described above in Section 19.3.1 pursuant to the Exelon GPPMA and terms, conditions and covenants contained therein, including employing, or contracting with, individuals represented by the appropriate craft unions.

19.3.3 If Contractor breaches the provisions of this Section 19.3, Contractor will indemnify, defend upon request and hold harmless Buyer Parties from all claims, liability, damages, and expenses (including advancement of reasonable attorneys' fees and defense costs) arising out of such breach.

#### **19.4 Use of Contractor Personnel**

19.4.1 Contractor will comply with Buyer's Policies and Procedures pertaining to use of contractors as specified in Exhibit B hereof, or the Contract Documents. For purposes of this Section 19.4, all terms with initial capitalization that are not otherwise defined herein, will be as defined in such Policies and Procedures. Contractor represents and warrants that: (i) Contractor and all suppliers, Subcontractors and agents involved in the performance of the Work hereunder strictly adhere, and will continue throughout the term of these Terms and Conditions to strictly adhere, to all applicable Laws in the jurisdictions in which the Work is performed and with respect to the operation of their production and manufacturing facilities and their other business and labor practices, including Laws governing the working conditions, wages, hours and minimum age of the workforce; and (ii) the Work will not have been, and will not be, performed, in whole or in part, by child labor or by convict or forced labor. Contractor further agrees promptly upon Buyer's request to furnish such documentation as may be required by Buyer to evidence compliance with the foregoing.

19.4.2 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 these Terms and Conditions. All Contractor Personnel who perform any portion of the Work hereunder for Contractor will be, and remain, employees of Contractor, and Contractor will be solely responsible for payment of compensation to such Persons as well as all applicable federal, state and local income and employment tax withholding and reporting for all such Contractor Personnel. Buyer Parties are not, and will not be construed to be, an employer (common law or otherwise), co-employer or joint employer of any Contractor Personnel. Neither Contractor (or its Subcontractors) or any Contractor Personnel is an agent of the Buyer Parties, and no such Party or Person has any authority to represent the Buyer Parties as to any matters, except as expressly authorized in the Contract Documents. Contractor will assume full responsibility for payment of all federal, state, provincial and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax Laws with respect to all Contractor Personnel. Should any of the Buyer Parties be required to pay any amount to a Governmental Authority for failure by Contractor (or its Subcontractors) to withhold any such amount as may be required by Law, Contractor will indemnify each of the Buyer Parties for any such amount so paid, including interest, penalties and fines.

19.4.3 Prior to commencement of Work by any Contractor Personnel who will (1) have access to any Buyer or its Affiliates' assets, including buildings, properties, computer systems, Confidential Information, and/or employee or customer information, and/or (2) have contact with any Buyer or its Affiliates' customers, Contractor (or its Subcontractor), will obtain from such Contractor Personnel, either directly or through its Subcontractors, a signed acknowledgement from all such Contractor Personnel, substantially in the form of the TPPA attached hereto as Exhibit C (. Contractor will provide a copy of each TPPA to Buyer's Designated Representative and maintain the original of each TPPA for Contractor Personnel for a period of six (6) years following the termination of Contractor Personnel.

19.4.4 Based upon such executed Third Party Personnel Acknowledgements and prior to

commencement of any Work by any such proposed new Contractor Personnel, Contractor will provide to Buyer's Designated Representative a written notice that identifies the names (and if possible the former Exelon or Affiliate Employee identification number) of Contractor Personnel assigned to provide Work to Buyer who identify themselves as a former employee of one of the Buyer Parties or a Retiree of one of the Buyer Parties (a "Notice of Former Employees/Retirees"). Notwithstanding any other provision of these Terms and Conditions, Buyer 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 Work for Buyer hereunder and/or from any Buyer worksite at any time at its sole discretion. In the event Buyer rejects any proposed Contractor Personnel or requests the removal of any Contractor Personnel from any Work and/or Buyer worksite Contractor will promptly remove such Contractor Personnel from providing Work to Buyer and provide a suitable replacement that meets all requirements of the Contract Documents. In the event Buyer requires the removal of any Contractor Personnel, Contractor will also ensure a prompt and smooth transition of all knowledge, information and data from such Contractor Personnel to his or her replacement. The rejection or removal of any Contractor Personnel will not be deemed a request or demand by Buyer that Contractor (or its Subcontractor) suspend or terminate the employment of any Contractor Personnel.

#### 19.4.5 Staff Augmentation Services.

19.4.5.1. Generally. Neither Contractor nor its Subcontractors will: (1) allow any Contractor Personnel to perform Staff Augmentation Work for Buyer outside of Buyer's Managed Service Provider (MSP) program without written authorization from Buyer's Designated Representative; (2) assign any Contractor Personnel to perform Staff Augmentation Work for the Buyer Parties for a total period of time in excess of two (2) years (calculated from the start date of the Staff Augmentation assignment), without a break in service of at least ninety (90) consecutive days, unless Buyer grants a written exception for such Contractor Personnel to the time limit; (3) report income for any of its Contractor Personnel performing Staff Augmentation work to the Buyer Parties, to the IRS on Form 1099; or (4) allow any Contractor Personnel to commence Staff Augmentation Work for the Buyer Parties until Contractor has executed and returned to Buyer Exhibit K (Staff Augmentation Services Special Terms and Conditions).

19.4.5.2. Retirees. In addition to the requirements of Section 19.4.5.1, neither Contractor nor its Subcontractors will allow any Retiree to perform any Staff Augmentation Services for the Buyer Parties unless the following conditions are met:

(1) the Retiree has been retired at least six (6) months prior to commencement of Staff Augmentation Services;

(2) there was no arrangement reached between Buyer or its Affiliates and the Contractor or Subcontractor before the Retiree's retirement date, or within six (6) months thereafter; and

(3) if the Retiree is receiving payments from a Retirement Plan in the form of an annuity, the Retiree may not perform Staff Augmentation Services for Buyer and its Affiliates for more than six (6) months, followed by a six (6) month break in service from performing Staff Augmentation Services for Buyer and its Affiliates, unless the Retiree agrees in writing to a suspension of the annuity payments after the first six (6) months in substantially the form of Exhibit C attached hereto (the "Third Party Personnel Acknowledgement" or "TPPA"). Suspension of annuity payments will not apply to Retirees who perform Services for Buyer and its Affiliates for no more than twenty (20) hours per week or six (6) months out of any rolling twelve (12) month period. In no case may a Retiree exceed one thousand (1000) hours of Staff Augmentation Services in a rolling twelve (12) month period without suspension of annuity payments.

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

19.4.7 At Buyer's request, Contractor agrees to participate in Buyer-provided training regarding Buyer rules, policies, and requirements. Contractor will not charge Buyer for such training time, provided Buyer pays for the training course(s).

## **19.5 Background Investigation.**

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

19.5.1.1. At a minimum, the Background Investigation must include the items set forth in Exhibit F.

19.5.1.2. Contractor is responsible for initiating, evaluating and completing all Background Investigations in accordance with any applicable Laws, including the Fair Credit Reporting Act.

19.5.1.3. Additionally, any Contractor Personnel who will have access to Personally Identifiable Information; trade secrets related to business strategy or business plans; or non-public financial information related to the Buyer's financial or strategic direction will be required to have a credit check. Any requirement for a Contractor Personnel to have a credit check as set forth in this Section 19.5.1.3 will be addressed in the applicable Purchase Order between the Parties.

19.5.2 The Background Investigation will be a minimum requirement, and some Buyer business units or departments may have more stringent Background Investigation requirements for particular roles as permitted or required by applicable Law, including: (1) license or professional certification verifications; (2) physical and psychological examinations, including random drug testing; (3) education verifications; and/or (4) driver's license/MVR check. Any requirement to have the additional Background Investigation set forth under this Section 19.5.2 will be addressed in the applicable Purchase Order.

19.5.3 Contractor will require all Subcontractors and Contractor Personnel to self-report to Contractor any criminal arrests or convictions of Contractor Personnel who (1) have access to any Buyer or its Affiliates' assets, including buildings, properties, computer systems, trade secrets, Confidential

Information and/or employee or customer information, and/or (2) have contact with any Buyer or its Affiliates' customers, unless such a requirement conflicts with applicable Laws.

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

19.5.5 If required by Buyer, Contractor will provide a photograph of each Contractor Personnel to Buyer meeting the requirements set forth in Exhibit F prior to the start of the Services on-Site.

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

19.5.7 Except for background checks performed by Buyer, Contractor will be responsible for conducting the Background Investigation at its own expense and will not be entitled to recover costs thereof unless both Parties agree, in writing, in advance of the Background Investigation.

19.5.8 Buyer may perform a background check on Contractor Personnel, at Buyer's expense, if Buyer determines that Contractor performs any work or Services relating to the Critical Cyber Assets or BES Cyber Systems of Buyer or its Affiliates, and Contractor will fully cooperate with Buyer including but not limited to obtaining consent from such Contractor Personnel, Contractor agrees that Buyer may provide such information to NERC, FERC, or an entity with authority delegated from them in order for Buyer to demonstrate its compliance with all legal and regulatory requirements under the NERC Reliability Standard Requirements applicable to Critical Cyber Assets or BES Cyber Systems.

19.5.9 Buyer reserves the right to terminate the applicable Purchase Order(s) as set forth in Section 17.1 (Termination With Cause) herein in the event of failure to comply with the requirements set forth in this Section.

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

**19.6 Key Personnel.**

The Purchase Order will designate any Contractor Personnel assigned to perform Work under a Purchase Order as Key Personnel. Contractor will take reasonable steps to ensure Key Personnel will remain available to perform the Work until Final Completion. Should Key Personnel become unavailable to perform the Work assigned to them, for any reason, and Contractor cannot provide an equally qualified replacement acceptable to the Buyer, Buyer reserves the right to terminate these Terms and Conditions as set forth in Section 17.1 (Termination With Cause) herein.

**19.7 Firearms, Weapons and Explosives.**

19.7.1 Contractors and Contractor Personnel may NOT possess firearms, weapons, or explosives of any nature or description (fireworks, any other device of explosive nature, bows and arrows, crossbows, sling shots, guns, ammunition, and knives other than those typically used for Work, or any other weapon) while in performance of their duties or at any time while on Buyer owned, leased or controlled property, including all buildings, vehicles, common areas and parking lots, unless expressly exempted in writing by the Buyer Chief Security Officer.

19.7.2 Storage of a firearm in a vehicle during working hours is not permitted by Contractor or Contractor Personnel, except where employers are expressly required by state law to allow employees to bring weapons to work. This restriction applies even if the Person has a license that allows him or her to keep firearms in his or her vehicle. The state law exception does not apply to nuclear Sites regulated by the NRC. Federal law does not allow weapons on any property owned by a nuclear licensee, including the corporate headquarters, nuclear plants, parking lots and other nuclear property. The willful unauthorized introduction of any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon these premises is a Federal crime.

19.7.3 To the extent that Contractor Personnel are required by Buyer to carry a weapon in the course of their assigned job duties, such Contractor Personnel must adhere to Buyer's Firearms, Weapons and Explosives Security Policy (SY-AC-05), except as required to carry out those job duties as set forth in the applicable Purchase Order or Contract Documents.

19.7.4 Buyer may conduct security inspections or searches of any Contractor or Contractor

Personnel personal property (including personal vehicles) located on any of its premises in any manner it considers appropriate to help maintain a safe work environment, protect property, prevent loss from theft, and/or comply with legal requirements. Violations of this policy, including, without limitation, a refusal to a search, will subject Contractors and Contractor Personnel to discipline up to and including termination of Contractor Personnel access, termination of Purchase Orders, and possible criminal sanctions depending on the location of the violation.

## **19.8 Alcohol and Drugs.**

19.8.1 Contractor will not permit Contractor Personnel to consume, use, possess, conceal, distribute, or purchase alcoholic beverages or unlawful Drugs while performing Work for Buyer or while on Buyer Sites.

19.8.2. Contractor will not permit Contractor Personnel to perform Work for Buyer or enter Buyer Sites if under the influence of alcoholic beverages or Drugs.

19.8.3. Contractor will notify Buyer's Designated Representative of Contractor Personnel taking lawfully prescribed or over the counter medication that may impair alertness, judgment or any other ability to perform job duties.

19.8.4. Contractor Personnel who are required to have Unescorted Access to, or otherwise perform Work at, Buyer's nuclear facilities, and Contractor Personnel who are subject to Department of Transportation requirements may be subject to fitness for duty and self-reporting requirements.

19.8.5. Contractor will not permit any Contractor Personnel to drive or operate any motor vehicle, including Buyer's vehicle, as part of their job duties if their driver's license has been suspended, revoked, or restricted.

19.8.6. Any Contractor Personnel found to be in violation of any provision of this Section 19.8 will be immediately removed from Buyer's Sites and Work. All such violations will be reported to the Buyer's Designated Representative and may be grounds for permanent removal from Buyer's property and Work.

## **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

### **20.1 Use of Subcontractors.**

Subject to these Terms and Conditions, Contractor may employ Subcontractors in connection with the Work only upon prior written approval by Buyer. Buyer may withhold any such permission in its sole discretion and, in any event, if the Subcontract does not provide to Buyer's satisfaction for the confidentiality of the Confidential Information and the assignment to Contractor or Buyer of all rights in the Work.

### **20.2 Subcontracts.**

Any portion of the Work to be performed for Contractor by a Subcontractor will be performed pursuant to an appropriate written subcontract between Contractor and the Subcontractor ("Subcontract"). No Subcontract will relieve Contractor of its obligations under the Contract Documents.

**20.3 Assignment of Subcontracts.**

Each Subcontract will provide for the assignment of the Subcontract to Buyer at Buyer's election upon termination of these Terms and Conditions or a Purchase Order by Buyer. Such assignment will provide that if Buyer fulfills Contractor's obligations to Subcontractor, then Subcontractor will perform the Subcontract on behalf of Buyer, its successors and assigns.

**20.4 Contractor's Payments to Subcontractors.**

Contractor will pay each Subcontractor promptly in accordance with the terms of the Subcontract. Buyer has no obligation to pay Subcontractors or to ensure Contractor pays Subcontractors.

**20.5 Disputes with Subcontractors.**

Contractor will inform Buyer of any material dispute arising between Contractor and any of its Subcontractors or between any Subcontractor and another Subcontractor that could affect the performance of the Work. Contractor will use its best efforts to avoid disputes regarding the Work and will resolve such disputes as they arise. Contractor will notify Buyer of any Subcontractor Labor Disputes.

**20.6 Compliance with Laws and Buyer Policies and Procedures.**

Contractor will cause any and all of its Subcontractors to comply with all applicable Laws and Policies and Procedures in the performance of the Work hereunder.

**ARTICLE 21.  
SAFETY, SECURITY AND ENVIRONMENTAL  
REQUIREMENTS; COMPLIANCE WITH LAWS**

**21.1 Acknowledgement of Hazardous Conditions and Applicable Laws.**

Contractor represents and warrants that it understands and acknowledges that the Work performed hereunder may involve Hazardous Substances and Health and Safety Laws and Environmental Laws related thereto. Contractor understands the potential risks to persons, property and the environment associated with the Work and Contractor knowingly and voluntarily assumes all risk of injury and damage to Contractor, Contractor Personnel and property caused by exposure to such Hazardous Substances while at the Site. Contractor agrees to advise fully all of its Subcontractors, Contractor Personnel and others working at the Site, of the risks and all necessary environmental, safety, and health procedures required by Governmental Authorities. Contractor will perform the Work in such a manner as to ensure that all potentially Hazardous Substances will be removed and/or treated in such a manner which causes no contamination of the Site at which the Work is performed, endangers none of the workers performing the Work, and creates no short or long term threat to the health of other persons or the environment. Further, Contractor will continuously inspect the Work to identify any unsafe conditions and will promptly take action to correct any condition which presents such a risk. Contractor warrants that it is technically, physically, financially, and legally ready, willing, and able to perform the Work hereunder and that it is familiar with and knowledgeable about the applicable Health and Safety Laws and Environmental Laws to the extent necessary to carry out its duties in a professional, complete and competent manner.

## 21.2 Safety.

21.2.1 Contractor will be responsible for safety with respect to Contractor's Work at the Site and will initiate and maintain an overall safety program (the "Contractor's Safety Program"). In order to protect persons and property from damage, injury, or loss, Contractor will comply with, and cause all Contractor Personnel performing any portion of the Work to comply with, all applicable Safety Laws, or Buyer's safety requirements, whichever is more stringent. Contractor will review and monitor the safety programs of Subcontractors to confirm that such safety programs are consistent with Contractor's Safety Program. Buyer will not be in charge of, or in any way responsible for Contractor's Safety Program. Contractor will promptly notify Buyer, in writing, of any material changes in Contractor's Safety Program or if Contractor discovers any conflicts between Contractor's Safety Program and Buyer's safety requirements or any applicable safety Laws and safety requirements. Contractor will be responsible for all fines or penalties assessed due to Contractor's failure to comply with applicable Health and Safety Laws and Environmental Laws, including any fines or penalties assessed against Buyer. Contractor will indemnify and hold Buyer Parties harmless from any claim, liability, loss, or expense (including reasonable attorneys' fees and court costs) resulting from Contractor's failure (or that of its Subcontractors or Contractor Personnel) to comply with applicable Health and Safety Laws and Environmental Laws. Contractor's duties and responsibilities for ensuring safety and protection of the Work will continue until such time as all the Work has been completed by Contractor and accepted by Buyer, including warranty Work after Final Payment.

21.2.2 Contractor will take all reasonable precautions for the safety of, and will provide all reasonable protection to prevent damage, injury, or loss to: (i) All Contractor Personnel on the Site and all other persons who may be affected thereby; (ii) the Work and all Material to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of Contractor or any of its Subcontractors; and (iii) other property at the Site or adjacent thereto, including Buyer's existing facility (if any).

21.2.3 Contractor will erect and maintain, as required by existing conditions and progress of the Work, all necessary or appropriate safeguards for safety and protection, including posting danger signs and other warnings against hazards and notifying owners and users of adjacent utilities.

21.2.4 Contractor will designate a responsible member of its organization at each Site whose duty will include enforcement of Contractor's Safety Program. This individual will be Contractor's Designated Representative unless otherwise designated by Contractor in writing to Buyer.

21.2.5 Contractor will notify Buyer and post appropriate signs when the Work is going to affect Buyer's operations or employees.

## 21.3 Security.

21.3.1 Contractor will inform Contractor Personnel of, and enforce their compliance with, all applicable Laws and Policies and Procedures pertaining to access to, and security of, the Site which Contractor and Subcontractor Personnel may have occasion to visit. Site-specific requirements will be identified in the Contract Documents. Contractor will use its best efforts to ensure that Contractor and Subcontractor Personnel do not pose a threat to the safe working environment at any Buyer Site or the integrity of Buyer's business operations.

21.3.2 Contractor will take precautions acceptable to Buyer to keep all portions of the Work and the Site secure in every material respect, decrease the likelihood of accidents from any cause, and avoid vandalism and other contingencies which are liable to delay the Work or give rise to any claims or

liabilities. Contractor will furnish and install all necessary equipment to provide safe means of access to all locations where Work is being performed. Contractor is responsible for receiving, storing, and securing all materials necessary to complete the Work that are delivered to the Site.

#### **21.4 Reports of Accidents.**

Contractor will report promptly to Buyer any accident or unusual occurrence during performance of the Work, including personal injury or death to any Contractor Personnel or any member of the public, or any damage to any of Buyer's property, the Site, or adjacent property. Reports of personal injury or death will be made verbally within three (3) hours to Buyer's Designated Representative. Contractor will submit a copy of all accident reports to Buyer's Designated Representative within twenty-four (24) hours after an accident. Upon discovery of the occurrence of any event that may constitute an emergency situation or an immediate endangerment to public health, welfare, or the environment, Contractor will immediately verbally notify all parties required by Health and Safety Laws and Environmental Laws, including the National Response Center, and will also immediately notify (but in any event no later than eight (8) hours after discovery of the event) Buyer's Designated Representative. In the event Buyer's Designated Representative is unavailable, and in any event, Contractor will provide written notice to Buyer to be received no later than twenty-four (24) hours after the occurrence or discovery of the event. The written notice will include a detailed description of the event, including the time and location at which the event occurred or was discovered, and any known causes of the event, any actions taken, or to be taken, to stop or mitigate the event.

#### **21.5 Environmental Requirements.**

21.5.1 All notifications regarding environmental requirements should be sent immediately to Buyer's Designated Representative.

21.5.2 In the event that Contractor Personnel encounter in the soil, air, or water at the Site, materials reasonably believed to be or contain Hazardous Substances, including those wastes and substances which are brought to the Site by Contractor, in levels in excess of any applicable standards set forth under any Health and Safety Laws or Environmental Laws, Contractor will immediately stop the Work in the area affected and report the condition to Buyer's Designated Representative and confirm such report within twenty-four (24) hours in writing. Contractor will take appropriate actions to prevent or contain the release, movement, spread, or disturbance of such Hazardous Substances and to protect persons and property and will notify Buyer immediately of such actions.

21.5.3 Contractor will not bring, nor permit Subcontractors, or others performing the Work to bring onto the Site any Hazardous Substances. Contractor will take precautions to prevent accidental releases or spills of material, including Hazardous Substances and litter. Contractor will report promptly to Buyer's Designated Representative any spills or releases of any such material.

21.5.4 Contractor will not under any circumstances apply to, or enter into negotiations with, any Governmental Authority for acceptance of variations from or revisions to Health and Safety Laws or Environmental Laws relating to these Terms and Conditions or a Purchase Order or to the performance thereof, without Buyer's prior written consent.

#### **21.5 Compliance Audits.**

Buyer will have the right to audit Contractor's compliance with the requirements of this Article at any time and from time to time upon reasonable notice. Contractor will fully and promptly comply with

such audit by Buyer or any Governmental Authority, and will provide written evidence of its compliance with the terms herein.

**21.6 Site Control.**

Buyer may immediately stop Work and/or remove, and deny access to the Site to any Person for whom Contractor is responsible under the Contract Documents and who is suspected by Buyer of: (i) committing a criminal offense; (ii) violating the Site-specific safety and security policies, practices and procedures, including the Safety Program and policies adopted by Contractor; or (iii) otherwise posing a threat to the safety and security of the Site or other Buyer facility.

**ARTICLE 22.  
WORK PRODUCT**

The Work Product will be the sole and exclusive property of Buyer. Contractor agrees to disclose to Buyer the existence of any Work Product of which Buyer would not otherwise be aware promptly upon its creation. Contractor agrees to assign and hereby does assign to Buyer the sole and exclusive right, title and interest in all Work Product. Contractor will execute and deliver to Buyer, and will cause Contractor Personnel to execute and deliver to Buyer, any and all documents that Buyer may reasonably request to convey to Buyer any interest Contractor or Contractor Personnel may have in any Work Product, or that are otherwise necessary to protect and perfect Buyer's interest in such Work Product. Contractor will take and cause its Subcontractors and Contractor Personnel to take such other actions as Buyer may reasonably request to perfect and protect Buyer's interest in any Work Product. Contractor will be compensated at the hourly rate last in effect between the Parties for any time expended in connection with assistance rendered by its personnel under this Article 22. Except as provided in Section 18.1 (Buyer's License to Use Intellectual Property Incorporated in the Work), Buyer will receive no right or interest in and to Contractor's or third party's intellectual property incorporated into the Work Product.

**ARTICLE 23.  
CONFIDENTIAL INFORMATION**

**23.1 Contractor's Obligations.**

During the term of these Terms and Conditions and thereafter, except as Buyer may authorize in writing, Contractor will, and will cause its Subcontractors and Contractor Personnel to treat and cause to be treated as confidential and proprietary all Confidential Information in their possession. In furtherance thereof, Contractor will:

23.1.1 take commercially reasonable steps to consistent with industry practices to prevent the disclosure of Confidential Information except as permitted by these Terms and Conditions or otherwise agreed to in writing by the Buyer;

23.1.2 use Confidential Information only in connection with the performance of the Work pursuant to these Terms and Conditions or the Purchase Order;

23.1.3 make copies of any tangible embodiment of Confidential Information only as necessary for the performance of such Work;

23.1.4 remove any tangible embodiment of Confidential Information from the Site only with the express written permission of Buyer

23.1.5 disclose Confidential Information only to Contractor Personnel who have a need to know the Confidential Information in connection with the performance or use of the Work;

23.1.6 destroy any and all electronic copies of Confidential Information maintained by the Contractor and its Subcontractors using a media sanitization process approved by the Buyer and destroy or return any and all tangible embodiments of Confidential Information to Buyer promptly following the request of Buyer, and in any event upon completion of Work pursuant to these Terms and Conditions or the Purchase Order; and

23.1.7 follow any additional instructions regarding the protection of Confidential Information included in the Contract Documents or as otherwise agreed to by the Parties in writing.

23.1.8 provide written certification to the Buyer of the completion of the requirements defined in Section 23.1.6.

## **23.2 Exclusions.**

Confidential Information will not include information that:

23.2.1 is or becomes generally available to the public other than as a result of disclosure by the Contractor Personnel; or

23.2.2 was within the Contractor's possession prior to being furnished by the Buyer on a non-confidential basis;

23.2.3 becomes available to the Contractor on a non-confidential basis from a source other than the Buyer; or

23.2.4 is developed by or for the Contractor without any use of or reliance upon Confidential Information of the Buyer.

23.2.5 Information will not be deemed to fall within these exclusions merely because it is included with information that does fall within such exceptions.

## **23.3 Disclosure Pursuant to Order of Governmental Authority.**

Notwithstanding the foregoing, Contractor may disclose Confidential Information to the extent that disclosure is ordered by a Governmental Authority of competent jurisdiction, provided that Contractor will provide notice to Buyer of the order for such disclosure promptly upon receiving it and that Contractor will fully cooperate with Buyer in any effort by Buyer to seek reconsideration or appeal of such order, or to secure a protective order governing such disclosure.

## **23.4 Injunctive Relief.**

Contractor acknowledges that the breach of any of the covenants contained in this Article 23 will result in irreparable harm and continuing damages to Buyer and Buyer's business, and that Buyer's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to Buyer at law or in equity in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including an injunction restraining Contractor from disclosing, in whole or in part, any Confidential Information. Contractor will

pay all of Buyer's costs and expenses, including advance of reasonable attorneys' fees, accountants' fees, and other costs incurred in enforcing such covenants.

### **23.5 Personally Identifiable Information**

If Contractor will have access to Personally Identifiable Information of any type or kind of any Buyer customer, employee, retiree, or contractor then Buyer's *Special Terms and Conditions for Personally Identifiable Information* will be incorporated into these Terms And Conditions to afford additional protections for such information.

## **ARTICLE 24. DISPUTE RESOLUTION**

### **24.1 Step Negotiations.**

The Parties will attempt in good faith to resolve all disputes under the Contract Documents ("Disputes") promptly by negotiation as follows. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the individuals who have previously been principally involved in the Dispute will meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the matter has not been resolved within thirty (30) Days from the referral of the Dispute to senior executives or if no meeting of senior executives has taken place within fifteen (15) Days after such referral, either Party may initiate such legal action as it deems appropriate. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator will be given at least three (3) Business Days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section 24.1 are confidential and protected from subsequent testimonial disclosures, and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

### **24.2 Work to Continue.**

In the case of any Dispute, Contractor will continue to perform the Work pending final determination of the Dispute, and Buyer will continue to make payments to Contractor in accordance with the Contract Documents for those portions of the Work completed that are not the subject of Dispute.

### **24.3 Venue.**

In any legal action commenced in relation to these Terms and Conditions or in connection with any Purchase Order incorporating these terms and conditions, the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia or, if the grounds for federal jurisdiction are not met, the cognizant Pennsylvania state trial court in Philadelphia, will have exclusive jurisdiction to hear such case; provided that, if the Buyer is Commonwealth Edison Company, the U.S. District Court for the Northern District of Illinois in Chicago or, if the grounds for federal jurisdiction are not met, the cognizant Illinois state trial court in Chicago, will have exclusive jurisdiction to hear such case; and further provided that if the Buyer is Baltimore Gas and Electric Company, the U.S. District Court for Maryland in Baltimore or, if the grounds for federal jurisdiction are not met, the cognizant Maryland state trial court in Baltimore, will have exclusive jurisdiction to hear such case.

#### 24.4 Waiver of Jury Trial.

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

### ARTICLE 25. MISCELLANEOUS

#### 25.1 Complete Agreement; Interpretation; Severability.

The Purchase Order, these Terms and Conditions, any Change Orders, and any other Contract Documents specifically referenced in any of the foregoing sets forth the entire contract of the Parties, and supersedes any and all prior agreements, arrangements, or understandings, relating to the subject matter hereof. The provisions of these Terms and Conditions will be interpreted where possible in a manner to sustain their legality and enforceability. Unless the context of the Contract Documents clearly requires otherwise, (i) “including” and “include” have the inclusive meaning frequently identified with the phrase “but not limited to” whether or not followed by the words “but not limited to” or other words to that effect, and (ii) references to the plural include the singular, the singular the plural, the part, the whole. The unenforceability of any provision of these Terms and Conditions in a specific situation will not affect the enforceability of that provision in another situation or the remaining provisions of these Terms and Conditions. **IF AND TO THE EXTENT ANY WAIVER, EXCLUSION, LIMITATION, INDEMNITY, OR OTHER PROVISION IN ANY PURCHASE ORDER, THESE TERMS AND CONDITIONS OR OTHER CONTRACT DOCUMENTS FAILS TO COMPLY WITH THE LAW OF THE STATE UNDER WHICH IT IS CONSTRUED DUE TO THE ABSENCE OF CAPITALIZATION OR OTHER GRAPHIC EMPHASIS, EACH PARTY WAIVES OBJECTION TO THE PROVISION ON THAT BASIS TO THE EXTENT PERMITTED BY LAW AND OTHERWISE AGREES TO BE ESTOPPED FROM RAISING SUCH OBJECTION IN ANY JUDICIAL PROCEEDING. IN DOING SO, EACH PARTY ACKNOWLEDGES THAT IT IS A SOPHISTICATED COMMERCIAL PARTY REPRESENTED BY COUNSEL IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO THIS SECTION 25.1.**

#### 25.2 Notices.

Any notice pertaining to the Work performed or a Purchase Order will be in writing (unless in an emergency and then promptly thereafter in writing) and sent via facsimile transmittal, registered or certified mail (postage prepaid), or by commercial overnight courier, to Buyer’s Designated Representative or Contractor’s Designated Representative as appropriate, at their respective addresses appearing in the Purchase Order, or if no Purchase Order has been issued, to the party designated in these Terms and Conditions. Notices will be effective only when received.

#### 25.3 Captions.

Captions used herein and in the attached Exhibit(s) and Schedule(s) and the other Contract Documents, are for the convenience of the Parties and will not be used in construing the meaning of these Terms and Conditions.

**25.4 Execution; Counterparts.**

The execution, delivery and performance by the Parties of these Terms and Conditions and the transactions contemplated hereby have been duly authorized by all necessary corporate actions of the Parties. These Terms and Conditions may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will constitute one and the same Agreement, and it will not be necessary in making proof of these Terms and Conditions to produce or account for more than one such fully executed counterpart.

**25.5 Survivability.**

The provisions of the Contract Documents, and rights and obligations therein and in these Terms and Conditions, including with respect to indemnification, limits of liability, intellectual property and confidentiality, will survive expiration (by performance) or termination of these Terms and Conditions or a Purchase Order and will survive indefinitely, except to the extent that such provision by its express terms ends sooner.

**25.6 No Third-Party Beneficiaries.**

No provision of these Terms and Conditions is intended or will be construed to be for the benefit of any third party .

**25.7 Publicity.**

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

**25.8 Assignment.**

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

**25.9 Choice of Law.**

The Contract Documents will be construed and interpreted, without giving effect to principles of conflict of law, in accordance with the Laws of the Commonwealth of Pennsylvania unless: (i) Commonwealth Edison Company is the contracting Party under the Purchase Order giving rise to the claim, in which case these Terms and Conditions, as it relates to that Purchase Order, will be construed and interpreted in accordance with the Laws of the State of Illinois, (ii) Baltimore Gas and Electric

Company is the contracting Party under the Purchase Order giving rise to the claim, in which case these Terms and Conditions, as it relates to that Purchase Order, will be construed and interpreted in accordance with the Laws of the State of Maryland; or (iv) the Work involves construction, in which case these Terms and Conditions will be construed in accordance with the Laws of the state where the Site is located.

**25.10 Amendments.**

The terms of these Terms and Conditions will be modified only by a written amendment. An amendment is a written document signed by an authorized representative of each party, which authorizes a change in these Terms and Conditions. No purported oral modification, waiver, or rescission of these Terms and Conditions by an employee or agent of Buyer will operate as a modification, waiver, or rescission of any of the provisions of these Terms and Conditions. No course of prior dealing, usage of trade and course of performance will be used to modify, supplement, or explain any terms of these Terms and Conditions. No waiver of any provision of these Terms and Conditions will be binding on Buyer unless set forth in a writing signed by an authorized agent of Buyer. No Affiliate will be bound by an amendment executed by any other Affiliate.

**25.11 Audit.**

Purchase Orders, all payments received pursuant to such Purchase Orders, and Contractor's Work and workplace area and related offices will be subject to audit and inspection by Buyer or any of its authorized representatives acting on Buyer's behalf. Contractor will comply with all reasonable requests by Buyer to make available books and records necessary to substantiate Contractor's charges and invoices for reimbursement. Such records will include, without limitation hereby: all invoices billed to Buyer; payroll records, timesheets and canceled payroll checks; third party invoices for purchases; paid invoices and canceled checks for purchased materials, subcontractor and third party charges; records relating to air freight and ground transportation. Contractor will also include in all Subcontracts issued in conjunction with any Purchase Order the right of Contractor and/or Buyer to audit the records of the Subcontractor. This Section 25.11 will survive termination of the Purchase Order for a period of two (2) years, or the warranty period, whichever is longer. Additionally, an audit may be conducted on any other records, such as environmental, safety, security, background examinations, or such other records as are necessary to ensure compliance with the Contract Documents and applicable Laws. The Parties agree that each will bear its own internal and external costs incurred in conducting and supporting the audit process, except that all Contractor documents to be reviewed by Buyer will be copied by Buyer or Contractor at Contractor's expense. Notwithstanding the foregoing, in the event that the Buyer audit indicates any willful misconduct or gross negligence on the part of the Contractor, Contractor will reimburse Buyer for all costs associated with the audit.

**25.12 Non-Waiver.**

The failure of Buyer to insist upon strict performance by Contractor or Buyer's failure or delay in exercising any rights or remedies provided in the Contract Documents or by law will not be deemed or construed as a waiver of any claims. No waiver by Buyer of a breach of any provision of the Contract Documents will constitute or be construed as a waiver of any other breach or of that provision. No payment or certificate, final or otherwise, nor the acceptance of any design, will be construed as (1) an acceptance of defective Work, (2) relieving Contractor of its obligations to make good any defects or consequences for which Contractor may be responsible, or (iii) a waiver of any obligations of Contractor under these Terms and Conditions.

### **25.13 Cumulative Remedies.**

Each of Buyer's rights and remedies under these Terms and Conditions will be cumulative and additional to any other or further rights or remedies provided in Law or equity or otherwise. Buyer will specifically retain all rights of legal action in tort under these Terms and Conditions on all issues relating to contribution, insurance coverage, and contractual indemnity.

### **25.14 Domain Names.**

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

### **25.15 Nondiscrimination and Affirmative Action.**

25.15.1. Contractor will, unless exempt, comply with applicable Laws pertaining to nondiscrimination and affirmative action, including part 60-1 of Title 41 of the Code of Federal Regulations), including the following: (i) Affirmative Action Compliance Program (41 CFR 60-1.40) as set forth below; (ii) Affirmative Action - Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action - Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans (41 CFR 60-300.4) (iv) Affirmative Action - Handicapped Workers (41 CFR 60-741.4); (v) Equal Opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin (41 CFR 60-1.4); (vi) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vii) Fair Labor Standards Act of 1938, as amended; (viii) Prohibition of Segregated Facilities (41 CFR 60-1.8); (ix) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7); and (x) union-related postings and contract clause requirements under Executive Order 13201 (29 CFR, part 470), Executive Order 13496, or other applicable Law.

25.15.2. OFCCP 41 CFR 60-1.40 Equal Opportunity Clause. During the performance of any Purchase Order, the Contractor agrees as follows: (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The Contractor will send to each

labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this Purchase Order or with any of such rules, regulations, or orders, this Purchase Order may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The Contractor will include the provisions of paragraphs (1) through (8) in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**25.15.3. THE CONTRACTOR AND SUBCONTRACTOR SHALL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-300.5(a). THIS REGULATION PROHIBITS DISCRIMINATION AGAINST QUALIFIED PROTECTED VETERANS, AND REQUIRES AFFIRMATIVE ACTION BY COVERED PRIME CONTRACTORS AND SUBCONTRACTORS TO EMPLOY AND ADVANCE IN EMPLOYMENT QUALIFIED PROTECTED VETERANS.**

**25.15.4. The Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

**25.16 Diversity Supplier Spend.**

Buyer is actively committed to supporting Diversity Suppliers as defined in applicable Policies and Procedures. In support of Buyer's commitment, Contractor will make certain required expenditures with Diversity-Certified Suppliers as may be set forth in a Purchase Order or other Contract Document. In such cases, Contractor will report its expenditures with Diversity Suppliers on a monthly basis unless another period is negotiated by the Parties and set forth in the Purchase Order. Contractor will provide this reporting information by completing a "2<sup>nd</sup> Tier Diversity Spend Report" utilizing Exelon's Supplier Diversity T2 reporting Website <http://ExelonTier2.cvmsolutions.com>. All submitted Diversity Suppliers must be supported by evidence of certification. Buyer recognizes a number of organizational certifications, including the following: National Minority Supplier Development Council (NMSDC) and affiliates; Women's Business Enterprise National Council (WBENC) and affiliates; Illinois Department of Transportation (MBE/WBE); City of Chicago (MBE/WBE); WMBE Clearinghouse (MBE/WBE);

City of Philadelphia Office of Economic Opportunity; Bureau of Contract Administration and Business Development - Commonwealth of Pennsylvania; Maryland Department of Transportation; City of Baltimore, Maryland; Anne Arundel County, Maryland. Recognition for certifications held by any other Diversity Supplier accreditation organization must be submitted to Buyer's Diverse Business Empowerment Office for approval.

**25.17 Employee Rights Notification.**

Refer to 29 CFR Part 471 – Notification of Employee Rights Under Federal Labor Laws. During the term of these Terms and Conditions, Contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor will prescribe, in conspicuous places in and about its plants and offices where Contractor Personnel covered by the National Labor Relations Act engage in activities relating to the performance of Work governed by these Terms and Conditions, including all places where notices to employees are customarily posted both physically and electronically. The notice will include the information contained in the notice published by the Secretary of Labor in the Federal Register (Secretary's Notice" as set forth in 29 CFR Part 471, Appendix A to Subpart A).

**25.18 Non-Solicitation**

Contractor agrees not to offer, promise, initiate or engage in any employment with personnel of the Buyer during the term of this Agreement and any renewals thereof and for a period of one (1) year following the date of expiration or termination of this Agreement.

**25.19 Microsite Decommissioning**

25.19.1 Contractor will and will cause its Subcontractors and Contractor Personnel to decommission all microsites hosted and maintained by the Contractor and its Subcontractors promptly following the request of the Buyer, and in any event upon the completion of Work pursuant to these Terms and Conditions or the Purchase Order.

25.19.2 Contractor will provide written certification to the Buyer of the completion of the requirements defined in Section 25.19.1.

**ARTICLE 26.  
LIST OF EXHIBITS ATTACHED**

**Exhibit A – Buyer’s Affiliates**

**Exhibit B – Buyer Policies and Procedures**

**Exhibit C – Third Party Personnel Acknowledgement**

**Exhibit D – Foreign Material Exclusion (FME) Special Terms and Conditions**

**Exhibit E – Nuclear Special Terms and Conditions**

**Exhibit F – Background Investigations**

**Exhibit G – Utilities Special Terms and Conditions**

**Exhibit H – Personally Identifiable Information (PII) Special Terms and Conditions**

**Exhibit I – Contractor Travel Costs Special Terms and Conditions**

**Exhibit J – Federal Funding Addendum**

**Exhibit K – Staff Augmentation Special Terms and Conditions**

**IN WITNESS WHEREOF**, the Parties have caused their duly authorized representatives to sign these Terms and Conditions effective as of the Date on the cover page.

[Signature Page Follows]



**Exelon Business Services Company, LLC**

**[Legal Name of Contractor entity]**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

**Address for Notices issued pursuant to these Terms and Conditions or prior to the execution of a Purchase Order**

**Address for Notices issued pursuant to these Terms and Conditions or prior to the execution of a Purchase Order**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile No. \_\_\_\_-\_\_\_\_-\_\_\_\_

Facsimile No. \_\_\_\_-\_\_\_\_-\_\_\_\_

**With a copy of any Notices of Default, Dispute or legal action to:**

**With a copy of any Notices of Default, Dispute or legal action to:**

Exelon Business Services Company, LLC  
2301 Market Street  
Philadelphia, PA 19103

Attn: Legal Department (Corporate & Commercial, and Litigation)

Attn: \_\_\_\_\_

**EXHIBIT A - BUYER AFFILIATES\***

Annova LNG, LLC

Annova LNG Common Infrastructure, LLC

Baltimore Gas and Electric Company (“BGE”)

Calvert Cliffs Nuclear Power Plant, LLC (“CCNPP”)

Commonwealth Edison Company

Compass Energy Services, Inc.

Compass Energy Services Gas, LLC

Constellation Energy Nuclear Group, LLC (“CENG”)

Constellation Energy Resources, LLC (“CER”)

CER – Quail Run Energy Partners LP

Constellation Energy Services, Inc.

Constellation Energy Services – Natural Gas, LLC

Constellation Energy Services of New York, Inc.

Colorado Bend I Power, LLC

Constellation Mystic Power, LLC

Constellation NewEnergy, Inc. (“CNE”)

CNEGH Holdings, LLC (“CNEGH”)

Constellation Power Source Generation, LLC

Criterion Power Partners, LLC

Exelon Business Services Company, LLC

Exelon Generation Company, LLC

Exelon Transmission Company, LLC

Exelon Wind, LLC

Exelon Enterprises Company, LLC

Handsome Lake Energy, LLC

MXenergy Holdings, Inc.  
Nine Mile Point Nuclear Station, LLC (“NMPNS”)  
PECO Energy Company  
R.E. Ginna Nuclear Power Plant, LLC (“REGNPP”)

\* Including their subsidiaries.

## EXHIBIT B – BUYER POLICIES AND PROCEDURES

Contractor shall comply with, and ensure Contractor Personnel familiarized themselves and comply with, the following Policies and Procedures applicable to Exelon and its Affiliates as indicated below, in addition to such other Buyer Policies and Procedures as set out in the Contract Documents. THE FAILURE OF EXELON TO LIST ANY POLICIES AND PROCEDURES APPLICABLE TO THE PERFORMANCE OF THE WORK OR CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS IN THIS EXHIBIT SHALL NOT EXCUSE CONTRACTOR FROM ITS OBLIGATIONS UNDER ARTICLE 3 (STANDARDS FOR PERFORMANCE) AND SECTION 4.1 (PERFORMANCE OF WORK) OF THESE TERMS AND CONDITIONS.

- HR-AC-73 - Exelon Policy Against Harassment
- SY-AC-12 - Mobile Device Standards
- SY-AC-14 - Exelon Acceptable Use Standard
- Exelon Corporation Code of Business Conduct (available at [http://www.exeloncorp.com/company/Documents/Exelon\\_COBC\\_10122015\\_72ppi\\_NoL\\_inksPages.pdf](http://www.exeloncorp.com/company/Documents/Exelon_COBC_10122015_72ppi_NoL_inksPages.pdf))

**EXHIBIT C - THIRD PARTY PERSONNEL ACKNOWLEDGEMENT**

I \_\_\_\_\_ acknowledge that I am an employee of \_\_\_\_\_. I acknowledge that my relationship with the Exelon company for which I will be performing work (“Buyer”), its Affiliates, or any of their successors is that of an independent contractor, not an employee, and that all services performed by me are pursuant to a contract between Buyer and \_\_\_\_\_ (“Contractor”), as an employee of either Contractor or one of its Subcontractors, as applicable. I also acknowledge that during the period I perform services for or on behalf of the Buyer pursuant to an arrangement with Contractor, I am not entitled to compensation of any kind from Buyer or to participate in any employee benefit plan or program of any kind offered to any employee of the Buyer, its Affiliates, or any of their successors and I expressly waive any and all such compensation and benefits. I understand that the preceding sentence will not prohibit me from receiving any earned and vested pension or retiree health care benefits from the Buyer, its Affiliates, or their successors to which I may already be entitled as a former employee.

In addition, I represent the following:

1. Check one:        \_\_\_ I am not a former employee of any of Buyer or its Affiliates (skip to Section 3 and initial 3.A); or  
                          \_\_\_ I am a former employee of Buyer; or  
                          \_\_\_ I am a former employee of these Buyer Affiliates: \_\_\_\_\_
2. If I am a former employee of Buyer or its Affiliates:
  - A. My Buyer or Affiliate former employee ID number (if known) was: \_\_\_\_\_
  - B. Check one:    \_\_\_ I am not eligible to receive (and am not currently receiving) a benefit under any Buyer or Buyer Affiliate pension, savings, or other retirement plan (initial 3.A and 3.B below); or  
                          \_\_\_ I am eligible to receive benefits under a Buyer or Buyer Affiliate pension, savings, or other retirement plan (initial 3.A., 3.B and 3.C. below).
3. Initial each item below to the extent that it applies to you, to indicate your acknowledgement and agreement:
  - A. \_\_\_\_\_ I am not currently employed by Buyer or any Buyer Affiliate and will not accept employment with any Buyer or Buyer Affiliate that commences during the period I am employed by Contractor.
  - B. \_\_\_\_\_ If providing Staff Augmentation Services to Buyer or its Affiliates, I will not provide such Services for a period in excess of two (2) years (calculated from the start date of my Staff Augmentation assignment) without a break in service of at least ninety (90) consecutive Days, unless Buyer or an authorized Affiliate has granted me a written exception to this requirement.
  - C. \_\_\_\_\_ If I am receiving annuity payments under any Buyer or Buyer Affiliate retirement plan , and am providing Staff Augmentation Services to Buyer or its Affiliates, I agree that Buyer or Buyer’s Affiliate may suspend such payments after six (6) consecutive months of Staff Augmentation Service (this condition will not apply if my Staff Augmentation Services do not exceed six (6) months in a one year period and/or 20 hours per week).

CONTRACTOR PERSONNEL

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Note: An executed acknowledgement shall be provided to Contractor named above.*

## EXHIBIT E - NUCLEAR SPECIAL TERMS AND CONDITIONS

### ARTICLE 1 DEFINITIONS

“**Act**” means the Atomic Energy Act of 1954, as amended, and the regulations of the NRC implementing the Act.

“**Contractor**” means the party identified in these Terms and Conditions which is to deliver the material and perform the services pursuant to Purchase Orders, and includes (unless the context of these Terms and Conditions clearly requires otherwise) subcontractors (as approved by Buyer pursuant to the terms and conditions of the Purchase Order, “Subcontractors”) and their respective employees and agents.

“**NRC**” means the Nuclear Regulatory Commission.

“**Nuclear Energy Hazard**” means the radioactive, toxic, explosive or other hazardous properties of Nuclear Material.

“**Nuclear Material**” means the “source material, special nuclear material or byproduct material,” which themselves have the meanings given them in the Act.

“**Protected Area**” means the area(s) designated as Protected Area at each of Buyer’s nuclear facilities.

### ARTICLE 2 BUYER NUCLEAR FACILITIES

In the event that any work is to be incorporated or performed in a nuclear facility owned (or jointly owned as a tenant-in-common or otherwise) by Buyer, the following provisions of this Article 2 will apply:

**2.1 Decontamination.** In the event that Contractor is required by the terms of these Terms and Conditions to repair or replace any Work, Buyer will perform any required decontamination of the facility to radiation levels required by the applicable Governmental Authorities to the extent reasonably necessary to permit access to such nuclear facility by Contractor for such repair, replacement, or re-performance. If Buyer, using installed equipment or normally available maintenance equipment, is unable to decontaminate to required levels, Contractor will perform the repair or replacement using necessary radiation protection equipment and procedures.

**2.2 Contractor Personnel Examinations.** All employees of Contractor and any Subcontractor (regardless of tier) who are involved in the performance of the Work at such nuclear facility will comply with all applicable Policies and Procedures of Buyer and any regulations of Governmental Authority regarding evaluations and examinations, including, without limitation, physical and psychological examinations, and Contractor will not permit any employee who fails to meet the requirements of any evaluation or examination to perform any such Work.

**2.3 Contractor Work Practices.** Prior to commencing with on-site testing, troubleshooting and/or installation activities at Buyer nuclear facilities the Contractor will provide their work practices, procedures and processes to Buyer for review to ensure they comply with Buyer standards. Review by Buyer will not relieve Contractor from fulfilling the Contractor’s entire obligation under these Terms and Conditions. These documents will be provided to the Buyer Representative without unreasonable delay and submittal will not impact the agreed upon start date. Any work started prior to acceptance by Buyer will be at the Contractor’s risk.

#### **2.4 Employee Rights and Protection**

2.4.1. Compliance with Anti-Discrimination Laws. All Contractors performing Work for Buyer's nuclear facilities must be aware of, and comply with, all applicable Laws which prohibit discrimination or retaliation against workers who have engaged in protected activities as defined in Section 211 of the Energy Reorganization Act (ERA) of 1974, as amended; 10 CFR 50.7 of the Nuclear Regulatory Commission (NRC) regulations, NRC form 3; and 29 CFR 24.2 of the Department of Labor (DOL) regulations ("Protected Activity"). Protected Activity includes the reporting of potential nuclear safety problems to the owner of the nuclear facility, Contractor, or the NRC. Contractors are required to inform all Contractor Personnel of these discrimination and retaliation prohibitions.

2.4.2. Reporting Nuclear Safety Problems. Contractors made aware of potential nuclear safety problems are required promptly to inform cognizant representatives of the nuclear facility owner. In addition, Contractors are required to promptly report to the owner of the nuclear facility, and to aggressively investigate, any allegation by Contractor Personnel of discrimination for engaging in Protected Activity. Contractor will also fully cooperate in any investigation by Buyer, the owner of the nuclear facility, or a government agency of any such allegations.

2.4.3. Contractor Personnel Communications With the NRC. Contractors will not include clauses in employment contracts, settlement agreements, labor agreements, or any other agreement affecting compensation, terms, conditions and privileges of employment, which prohibit or restrict current or former Contractor Personnel, from providing information to any member of the NRC or otherwise from engaging in such Protected Activities.

2.4.4. Employee Concerns Program. The owner of the nuclear facility maintains an Employee Concerns Program. This Program applies to all personnel, including Contractor Personnel, who perform Work at or provide Services or Materials to the nuclear facility. The Program permits employees to report safety and other workplace issues in confidence or anonymously and provides an avenue to address any such issues. Contractors must adhere to the terms and provisions of the owner's Employee Concerns Program and are required to inform Contractor Personnel of the availability of the Program.

2.4.5. Exit Interviews and ECP Brochure. Contractors will make every attempt to provide Contractor Personnel who work on the nuclear facilities with an opportunity for an exit interview under the owner's approved program and will supply Contractor Personnel with a copy of the owner's Employee Concerns Program brochure to complete and mail back to the owner at no cost to the employee.

**2.5 No Contractor Indemnity for Nuclear Incidents.** Notwithstanding anything in the Purchase Order and/or the Terms and Conditions to the contrary, Contractor will not be required to indemnify, defend, or hold harmless Buyer from or against any losses, claims, damages, expenses, or liabilities arising out of or based upon bodily injury, death and/or property damage to the extent that such bodily injury, death and/or property damage results from or is caused in whole or in part directly or indirectly by an actual or alleged "nuclear incident" as defined in the Act.

**2.6 Indemnification and Nuclear Liability Insurance.** Buyer will, without cost to Contractor, obtain, and except as provided in Section 2.7 of this Article, maintain in effect with respect to such nuclear facility from the first arrival of nuclear fuel at such nuclear facility, through decommissioning of such nuclear facility:

2.6.1 An agreement of indemnification as required by Section 170 of the Act; and

2.6.2 Nuclear liability insurance in such form and in such amount as will meet the financial protection requirements of the Nuclear Regulatory Commission pursuant to Section 170 of the Act.

2.6.3 To the extent permitted by applicable law, such Nuclear liability insurance will

authorize Buyer to waive all rights of subrogation that Buyer's insurance carrier might exercise against Contractor.

2.6.4 Buyer hereby waives all rights of subrogation against Contractor under such policies procured in accordance with this Article.

**2.7 Replacement Liability Protection.** If the nuclear liability protection system provided by Section 170 of the Act is repealed, modified, or expires, or because Buyer is permanently ceasing operations, Buyer will, without cost to Contractor, maintain in effect, to the extent available on reasonable terms and to the extent customarily maintained by nuclear plant owners, liability protection through government indemnity, limitation of liability or liability insurance in order to minimize impairment of the protection afforded Contractor and its Subcontractors by Section 170 of the Act and the provisions of this Article.

### ARTICLE 3 CONTRACTOR NUCLEAR LIABILITY INSURANCE

In the event that any Work is to occur outside the confines of a Buyer nuclear station and (i) exposure to the Nuclear Energy Hazard that is or alleged to be incorporated or performed in a non-Buyer facility exists (including, without limitation, decontamination, recycling, treatment or disposal), or (ii) where the scope of work includes the transportation of Nuclear Material, then the following provisions of this Article 3 will apply, in addition to the other insurance requirements set forth in the Purchase Order and other applicable contract documents:

#### **3.1 Licensed and Regulated Facilities.**

For a Contractor subject to subsection (i) above, any work to be performed in a non-Buyer facility will be performed in a facility that is licensed and regulated by the NRC and/or applicable Governmental Authority. Such non-Buyer facility will be completely owned and/or operated by Contractor and will comply with all applicable industry standards in connection with its operations and licensing. Contractor will notify Buyer promptly in writing if any such facility is (a) under investigation for violations that may reasonably jeopardize such facility's license or operations or (b) included as part of a possible sale or transfer (whether merger, stock, asset or otherwise involving Contractor and its affiliates).

#### **3.2 No Indemnity for Nuclear Incidents or Exposure to Nuclear Energy Hazard.**

Notwithstanding anything in the Purchase Order and/or other contract documents to the contrary, Buyer will not be required to indemnify, defend, or hold harmless Contractor from or against any losses, claims, damages, expenses, or liabilities arising out of or based upon bodily injury, death and/or property loss or damage to the extent that such bodily injury, death and/or property loss or damage results from or is caused (in whole or in part, directly or indirectly, actual or alleged) by a "nuclear incident" as defined by the Act or exposure to a Nuclear Energy Hazard, to the extent such "nuclear incident" and/or exposure to a Nuclear Energy Hazard occurs outside of a Buyer Nuclear generating station.

#### **3.3 Contractor Indemnification.**

To the extent that an alleged or actual "nuclear incident" as defined by the Act or exposure to a Nuclear Energy Hazard occurs outside of a Buyer Nuclear generating station when Buyer has provided the Contractor with care, custody and control of the Buyer Material, then Contractor will, to the fullest extent permitted by law, indemnify, defend upon request and hold harmless Buyer Parties against all losses, claims, damages, expense (including reasonable attorneys' fees and costs) and liabilities sustained or incurred by the Buyer 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 Buyer Parties, Contractor and/or any Subcontractor, arising directly or indirectly out of such alleged or actual nuclear incident or exposure to a Nuclear Energy Hazard, regardless of whether any such liability, damage, loss

or injury is caused by, results from or arises out of the negligence, fault or other liability of the Buyer Parties or any other party to be indemnified. Except as may be otherwise provided by applicable Law, Buyer Parties' right to indemnification will not be impaired or diminished by any act, omission, misconduct, negligence or default of an Buyer Party or any employee or agent of a Buyer Party who may be alleged to have contributed thereto. To the extent any Law may prohibit any application of all or any part of the indemnity obligations in these Terms and Conditions, it is the intent of the Parties that such provisions are severable, and will be construed to impose the indemnity obligation in all circumstances, applications, and situations to the fullest extent permitted by Law.

### **3.4 Contractor Insurance.**

3.4.1 For a Contractor subject to subsection (i) above, Contractor will maintain Nuclear Energy Liability Insurance (Facility and Worker Form) in an amount no less than \$200,000,000 in the aggregate with respect to upstream work (e.g. enrichment and fuel fabrication) and no less than \$50,000,000 for downstream work (e.g. processing waste, maintenance of radioactive parts, storage of parts and/or waste, and waste disposal). For a Contractor subject to subsection (ii) above only, Contractor will require its shipping Subcontractor to maintain Nuclear Energy Liability Insurance (Suppliers & Transporters) in an amount no less than \$5,000,000 in the aggregate.

3.4.2 Contractor will maintain such Nuclear Energy Liability Insurance policies in effect until Contractor has permanently ceased operation of the facility and such facility can no longer be considered a facility whose licensing is governed by the NRC or applicable Governmental Authority. If Contractor proposes to cancel the policy, let the policy expire or change the limits of the policy to below such originally agreed upon amounts, then Contractor promptly will notify Buyer in writing at least 30 days prior to such actions (10 days in the case of nonpayment of premium). In order to effectuate any such change or cancellation, Contractor must obtain Buyer's prior written consent. If such policy is being canceled or terminated because Contractor or its affiliate is being sold and/or the facility is being sold in whole or in part (whether by asset sale, stock sale, merger or otherwise), then Contractor will require that the new owner of the facility maintain this insurance and comply with the requirements of this Article as if such sale had not occurred. Notwithstanding anything to the contrary contained in the Contract Documents, the total protection on Buyer's behalf will not at any time be less, either in scope of coverage or amount, than was required contractually immediately prior to the change.

3.4.3 To the extent permitted by applicable law, such Nuclear liability insurance will authorize Contractor to waive of all rights of subrogation that Contractor's insurance carrier might exercise against Buyer.

3.4.4 Contractor hereby waives all rights of subrogation against Buyer under such policies procured in accordance with this Article.

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

3.4.6 In the event of any failure by Contractor to comply with the insurance requirements of these Terms and Conditions, Buyer 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 or such insurance available to Buyer for purchase, at Contractor's expense, provided that Buyer will have no obligation to do so and if Buyer will do so, Contractor will not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and

coverages. All such costs incurred by Buyer will be promptly reimbursed by Contractor and/or may be withheld from any payment due Contractor.

3.4.7 With respect to the Workers Compensation, Commercial general liability, Automobile liability and Excess liability insurance policies required to be maintained pursuant to the Purchase Order and/or other contractual documents, no nuclear exclusion other than the exclusion generally consistent to ISO Broad Form Nuclear Liability Exclusion endorsement IL 0021 will apply to such policies.

3.4.8 Contractor will provide evidence of the required insurance coverage and file with Buyer a Certificate of Insurance acceptable to Buyer prior to commencement of the work. The insurance and the insurance policies required by this Article will not be canceled, or 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 Buyer by Contractor.

3.4.9 Contractor will permit Buyer and its insurance representatives, including ANI, to inspect Contractor's facilities involving Buyer's materials and/or waste during normal working hours.

3.4.10 Contractor will require that all its Subcontractors comply with all applicable insurance coverage requirements of this Article. This includes, without limitation, those Subcontractors retained to transport materials to Buyer (e.g., returning repaired equipment or cleaned laundry).

## **ARTICLE 4 RADIOACTIVE MATERIAL**

### **4.1 Radioactive Material.**

Radioactive material will not be accepted at Buyer facilities unless radiation levels are less than or equal to eighty percent (80%) of the limits as stated in Federal Regulation 49 CFR 173.441. Exceptions may be granted if Contractor provides prior notification of shipment dose levels and obtains approval to ship the material by the Buyer Radioactive Material Specialist or Radiation Protection Manager (RPM).

### **4.2. Radioactive Shipping License.**

Contractor will submit their radioactive shipping license to Buyer's Radioactive Material Specialist or RPM before shipment arrives at a facility.

### **4.3. Removal of Buyer-owned Materials.**

Contractor will not remove from any non-Buyer facility any Buyer-owned Materials that are considered Nuclear Material or exposed to the Nuclear Energy Hazard unless such Materials have been properly screened for shipment and/or disposal, including, without limitation, any Material upon which services related to the scope of Work have been or were to be performed. Notwithstanding the previous sentence, Contractor may return Materials to Buyer if the scope of Work includes repairing and/or cleaning Material (e.g. equipment or laundry) and returning the Materials to Buyer upon completion of the services. In addition, Contractor will not sell, lease or otherwise transfer (or agree to the same) any interest in such Materials without Buyer's consent and without the potential buyer or transferee of such Materials providing Buyer and Exelon Parties Nuclear Energy Liability Insurance protections and contractual protections at least as stringent as the protections provided pursuant to the Contract Documents.

**ARTICLE 5  
POLICIES AND PROCEDURES; FITNESS FOR DUTY, UNESCORTED ACCESS;  
SAFEGUARDS INFORMATION**

**5.1 Nuclear Facility Policies and Procedures.**

5.1.1. Contractor will comply with the latest versions of the following Buyer Policies and Procedures with respect to work performed at nuclear facilities, and such Policies and Procedures are incorporated herein by reference.

5.1.1.1. SY-AA-102-229 “Issuing & Documenting Acceptance Of The Exelon Fitness For Duty And Unescorted Access Program Requirements For Contractors And Vendors.”

5.1.1.2. SY-AA-101-130 “Security Responsibilities For Station Personnel”.

5.1.1.3. SY-AA-101-112, “Exelon Security Search Processes”.

5.1.1.4. SY-AA-102-1001, “Exelon Nuclear Station Owner Controlled Area Fitness For Duty Program”

5.1.1.5. SY-AA-102-201, “Call-Outs For Unscheduled Work”

5.1.1.6. SY-AA-102-205, “Fitness For Duty (FFD) Appeal”

5.1.1.7. SY-AA-102-207, “Unescorted Access Criteria For Fitness For Duty”

5.1.1.8. SY-AA-103-513 “Continual Behavioral Observation Program”

5.1.1.9. SY-AA-103-517 “In processing Of Personnel (Employee And Contractor)”

5.1.1.10. SY-AA-103-518 “Out processing Of Personnel (Employee And Contractor)”

5.1.1.11. LS-AA-119 “Fatigue Management and Work Hour Limits”

5.1.1.12. LS-AA-119-1005 “Contractor/Vendor Compliance with Fatigue Management and Work Hour Limits”

Contractor will obtain the Policies and Procedures referenced above from the Buyer’s Designated Representative.

5.1.2. Contractor will provide a written job task analysis or job description upon request from Buyer Nuclear Security for each person/position who is seeking authorized unescorted access at any nuclear facility.

5.1.3 The Contractor will not charge Buyer’s third party background vendor entity hired to perform the background investigations a fee to conduct an employment check on Contractor individuals currently or previously employed.

5.1.4 Contractor will answer suitable inquiry questions to complete a background investigation on all of its personnel who have unescorted access to a Buyer nuclear facility.

5.1.5 Buyer requires a minimum of 72 hours’ notice, unless otherwise approved, for escorted access notification to security.

5.1.6 Contractor Personnel are required to provide name, social security number, in advance, to the cognizant escort and present an approved photo ID (driver's license typ.) at time of escorted access.

## **5.2. Fitness for Duty Requirements.**

5.2.1. Contractor will cooperate with and follow, and will cause its Subcontractors and Contractor Personnel to cooperate with and follow, Buyer's Fitness For Duty Program Policies and Procedures that are involved in Work on Exelon property.

5.2.2. Buyer will perform all drug and alcohol testing and will provide Nuclear General Employee Training (NGET), including Fitness For Duty training for Contractor Personnel as required per 10 CFR Part 26.

5.2.3. Contractor will operate a Continual Behavioral Observation Program (CBOP) as required by the NRC Access Authorization Rule, 10 CFR 73.56 and NRC Regulatory Guide 5.66 (which is covered in NGET).

5.2.4. Contractor will inform Contractor Personnel that they must abstain from consuming alcohol for five hours (5) prior to reporting to work at Buyer's nuclear stations (the "five hour abstinence rule").

5.2.5. Contractor will conduct call-outs for unscheduled work according to the Fitness For Duty Call-Out Guideline (which is received in NGET) including the following steps:

5.2.5.1. Contractor is responsible for asking Contractor Personnel and documenting responses to the following questions: (i) "Have you consumed alcohol in the past 5 hours" and (ii) "Are you fit for Duty?"

5.2.5.2. Contractor Personnel being called out are responsible to make a statement regarding the previous questions.

5.2.5.3. Contractor will retain the documentation of call-outs on-Site and make it available to Buyer for annual audits.

## **5.3. Unescorted Access Requirements**

5.3.1. Requesting Unescorted Access. Contractors whose Contractor Personnel require unescorted access to a Buyer nuclear station Protected Area ("Unescorted Access") must first contact the Station Security Administrators Office listed in Exhibit A for current badging instructions.

5.3.2. Cancellation of Unescorted Access. Contractor will immediately notify Buyer's nuclear station Security Department by telephone, following up in writing by fax or U.S. mail within twenty-four (24) hours using Attachment B, when any Contractor Personnel granted Unescorted Access: (i) no longer requires access to Buyer's or its Affiliates' assets, (ii) a Contractor Personnel is terminated or his or her employment is otherwise ended, or (iii) the Services are either completed or terminated, so that Buyer can discontinue access for such Contractor Personnel. Contractor will immediately notify Buyer to terminate access to Sites for any Contractor Personnel that is: (i) suspended or terminated from employment for cause, or (ii) that Contractor reasonably believes may pose a threat to the safe working environment at or to any Site, including to employees, customers, buildings, assets, computer systems, trade secrets, confidential data, and/or employee or customer information and Contractor will take all steps reasonably necessary to immediately deny such Contractor Personnel access to the Site and its

customers, and return to Buyer any Buyer-issued property including, but not limited to, Buyer photo ID badge, keys, parking pass, documents, or laptop in the possession of such Contractor Personnel. See Attachment A for contacts during and outside normal business hours.

5.3.3. Contractors will require all Subcontractors and Contractor Personnel to report all arrests and convictions of Contractor Personnel, other than minor traffic violations (i.e., speeding, parking tickets), to Buyer's nuclear station Security Department. Failure to report an arrest or conviction could result in denial or loss of Unescorted Access.

#### **5.4 Safeguards Information.**

All Contractor's personnel that need to access, hold, or create Safeguards Information (SGI) including Safeguard Information –Modified Handling (SGI-M) relating to Buyer facilities are to follow and acknowledge the requirements set forth in Buyer procedure SY-AA-101-106, "Control and Classification of SGI" and meet the requirements of 10 CFR 73.21, 10 CFR 73.22, and 10 CFR 73.23. This includes but is not limited to the following responsibilities:

5.4.1. All SGI including SGI-M needs to have classification information - Name, Title, Organization, Date of Classification.

5.4.2. All newly created SGI including SGI-M to have the classification information incorporated into the first page of the document.

5.4.3. Only crosscut shredders producing a piece size of ¼" or less can be used to destroy SGI including SGI-M.

5.4.4. SGI including SGI-M can only be created, revised, viewed electronically and/or printed on computers and printers that do not have a network connection and are approved for usage as a "stand-alone" machine.

5.4.5. SGI including SGI-M must be stored in a manner approved by Buyer and in approved cabinets with approved locks.

5.4.6 SGI including SGI-M must be packaged per procedure for transportation.

5.4.7 SGI including SGI-M found unattended must NOT BE READ, must be quarantined, and Security must be immediately notified.

#### **5.5. Approved Vendor List.**

Failure to comply with this Article 5 could result in Contractor's removal from Buyer's Security Approved Vendor List.

**ARTICLE 6  
MISCELLANEOUS**

**6.1 Control of Portable Devices and Portable Media to be Used with Critical Digital Assets.**

Contractor will comply with the latest version of Buyer procedure MA-AA-716-235 “Control of Critical Digital Asset (CDA) Portable Media and Portable Devices” with respect to work performed at nuclear facilities, and such procedure is incorporated herein by reference. This procedure implements NRC requirements specified in 10 CFR 73.54. Contractor will obtain the referenced procedure from the designated Buyer Contract Administrator.

**6.2 Chemicals.**

All chemicals intended to be delivered to a Buyer facility for Work must be approved by each Exelon facility’s Chemical Control Coordinator regardless of hazard and before shipping to that facility. Buyer will not be responsible for Contractor’s cost for delays if chemicals are brought to a facility without approval.

**6.3 Deliveries.**

Drivers making deliveries to Buyer’s nuclear facilities that require access into the Protected Area must be aware of the following:

6.3.1 Identification. Access to the nuclear facility will not be granted without an acceptable form of photo identification (i.e. valid government issued identification card with a photo or employer-issued identification card with a photo). Visitor access to the Protected Area will not be granted without a valid government issued identification card with photo and a social security number. For delivery access to an Exclusion Zone/Protected Area, Contractor must submit 48-hour notice prior to the time access is anticipated to be needed (See SY-AA-101-130). Access to the Protected Area as a visitor will not be granted without a valid government issued identification card with a photo and a social security number.

6.3.2 Search. Prior to entering the Protected Area, all Contractor Personnel, Contractor vehicles and all their contents and compartments will be searched. Assure that all locked compartments can be opened. Do not bring any items and material with you that are not absolutely necessary (i.e. briefcases, duffel bags, tool boxes, tarps, etc.) Assure that the vehicles are reasonably well kept. Clothing, towels, rags, work gloves, and other such items that are not necessary for the delivery will lengthen the amount of time taken to search the vehicle. Removing unnecessary objects from the glove compartment will also assist in performing the search more quickly.

6.3.3 Fitness-For-Duty – Visitors who have consumed alcohol within the last 5 hours should not request access to the Protected Area.

6.3.4 Prohibited Items. The following items are NOT allowed within the Protected Area:

- Firearms (including parts, facsimiles and ammunition)
- Explosives
- Incendiary devices
- Alcoholic beverages
- Illegal drugs and drug paraphernalia
- Incapacitating agents (mace, pepper spray, etc.)

- Hunting bows
- Illegal knives (such as switchblades)

**IF DRIVERS OR CONTRACTOR PERSONNEL HAVE ANY OF THE ABOVE ITEMS, CONTRACTOR MUST INFORM SECURITY PRIOR TO THEIR ATTEMPTING ENTRY.**

6.3.5. Medications. Medication must be kept in its original container (e.g., do not mix medications in the same container) and the name on the medication bottle is to match the name of the individual possessing it. Buyer Site Security must contact appropriate law enforcement agencies for all suspected illegal substances and illegal firearms, explosives, or incendiary devices.

6.3.6. Sampling of Deliveries. Depending on the product being delivered, the site may require collecting a sample of the product and testing it prior to unloading the product.

6.3.7. Driver's Use of Solvents or Chemicals. No solvents or chemical products (such as WD-40) owned by the driver can be used without permission from site personnel to assure conformance with the Site's Consumable Chemical Control Program.

**6.4 Delay Costs.** Buyer will not be responsible for costs due to delays or reimbursement thereof arising out of Contractor's non-compliance with the provisions of Articles 4, 5 and 6 of this Exhibit E.

**Attachment A**

DURING NORMAL BUSINESS HOURS: Monday – Friday 8am – 4pm  
FAX or Telephone Cancellations to Station Security Badge Fabrication

<p>Braidwood Station Station Security Badge Fabrication (815) 406-2930 Fax Number (815) 406-2939 East of IL Rt. 53 1½ Miles S. of Rt. 113 Braceville, IL 60407</p>	<p>Byron Station Station Security Badge Fabrication (815) 406-2902 Fax Number (815) 406-2939 4450 N. German Church Road Byron, IL 61010</p>
<p>Calvert Cliffs Nuclear Power Plant Station Security Badge Fabrication (410) 495-3751 Fax Number (410) 495-6818 1650 Calvert Cliffs Parkway Lusby, MD 20657</p>	<p>Clinton Station Station Security Badge Fabrication (217) 937-2902 Fax Number (217) 937-2999 8401 Power Road Clinton, IL 61727</p>
<p>Dresden Station Station Security Badge Fabrication (815) 406-2930 Fax Number (815) 406-2939 6500 N. Dresden Road Morris, IL 60450</p>	<p>LaSalle County Station Station Security Badge Fabrication (815) 415-2902 Fax Number (815) 415-2939 2601 N. 21st Road Marseilles, IL 61341</p>
<p>Limerick Station Station Security Badge Fabrication (610) 718-2061 Fax Number (610) 718-2739 3146 Sanatoga Road Pottstown, PA 19464</p>	<p>Nine Mile Point Nuclear Station Station Security Badge Fabrication (315) 349-1912 Fax Number (315) 349-4229 348 Lake Road Oswego, NY 13126</p>
<p>Oyster Creek Station Station Security Badge Fabrication (609) 971-4800 Fax Number (609) 971-4099 Route 9 South, Box 388 Forked River, NJ 08731</p>	<p>Peach Bottom Station Station Security Badge Fabrication (717) 456-3045 Fax Number (717) 456-4257 1848 Lay Road Delta, PA 17314</p>

**MASTER TERMS AND CONDITIONS FOR CONSULTING AND PROFESSIONAL SERVICES**



<p>Quad Cities Station Station Security Badge Fabrication (815) 406-2930/2931(309) 227-2902 Fax Number (815) 406-2939(309) 227-2939 22710 206<sup>th</sup> Ave North. Cordova, IL 61242</p>	<p>R.E. Ginna Nuclear Power Plant Station Security Badge Fabrication (315) 791-3275 Alternate (315) 791-3101 Fax Number (315) 791-3913 1503 Lake Road Ontario, NY 14519</p>
<p>TMI Station Station Security Badge Fabrication (717) 948-8293 Fax Number (717) 948-8636 2625 River Road Middletown, PA 17057</p>	<p>Zion Station Station Security Badge Fabrication (847) 746-2084 ext. 2710 Fax Number (847) 731-4257 101 Shiloh Blvd Zion, IL 60099</p>

**Attachment B**

**Cancellation of Unescorted Access**

**Date:** \_\_\_\_\_

**Transmitted by Fax or U.S. Mail**

**From:**

**To: Station Security Administrator** (check one or more stations below)

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Braidwood Station               | <input type="checkbox"/> Byron Station                  | <input type="checkbox"/> Calvert Cliffs Nuclear Power Plant |
| <input type="checkbox"/> Dresden Station                 | <input type="checkbox"/> LaSalle Station                | <input type="checkbox"/> Limerick Station                   |
| <input type="checkbox"/> Nine Mile Point Nuclear Station | <input type="checkbox"/> Oyster Creek Station           | <input type="checkbox"/> Peach Bottom Station               |
| <input type="checkbox"/> Quad Cities Station             | <input type="checkbox"/> R.E. Ginna Nuclear Power Plant | <input type="checkbox"/> Zion Station                       |

**Requests for unescorted access for the personnel listed below is hereby cancelled.**

Full Name	Social Security Number

\_\_\_\_\_  
Name of Contractor Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed or Typed Name of Signatory

\_\_\_\_\_  
Title of Signatory

## **EXHIBIT F – BACKGROUND INVESTIGATIONS**

Background investigations must include the following:

- Use as Investigation search components the applicant's date of birth and all names/aliases provided or identified during the investigation
- SSN Verification and Trace
- Searches of:
  - National criminal database, such as the National Crime Information Center (NCIC) or the Widescreen Plus National Criminal Search
  - 7 year county and, if available, local municipality criminal database search using addresses from the previous seven years
  - 7 year Federal District Court criminal database search using addresses from the previous seven years
  - 7 year State Law Enforcement Verification using addresses from the previous seven years
  - The National Sex Offender & Violent Abuse Registry
  - Global OFAC
  - 7 year Employment Verification
  - Education Verification – Highest completed
  - 5-panel Drug Test

If required by Buyer, Contractor will provide a photograph of each Contractor Personnel to Buyer prior to the start of the Services. Photo requirements for identification badges:

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

**EXHIBIT G – UTILITIES SPECIAL TERMS AND CONDITIONS**

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In the event that Contractor performs any Work for an Exelon Utility, the following provisions will apply:

## ARTICLE 1. DEFINITIONS

Unless otherwise defined herein, all capitalized terms will have the meaning given to them in the Terms and Conditions unless context requires otherwise.

“**ACE**” means Apparent Cause Evaluation. An Apparent Cause Evaluation is an investigation conducted to determine the apparent cause and extent of condition of an event or problem. An ACE provides a limited investigation and assignment of corrective actions

“**As-Built Package**” means the Work Package that is returned to the Utility at the completion of work documenting the condition of the Facilities associated with the work. The as-built package should accurately describe the completed Work.

“**Baseline Work**” means scopes of Work that are typically performed as routine work by Utility gas mechanics or electric lineman, and Contractors may be assigned as a Contractor of Choice (COC) to fill peaks in the base workload.

“**Centrally Managed Project**” means a project that is managed by a Buyer project manager for the applicable Utility’s Project Management Organization.

“**CIWP**” means Contractor Information Web Page. CIWP is an internet controlled access website where Contractors can access current versions of applicable Policies and Procedures required for the completion of assigned Work.

“**CPA**” means contract payment authorization issued through the Buyer’s electronic contract management system (currently Asset Suite 8) to approve the payment of an invoice.

“**CR**” means Condition Report. A Condition Report is a written document used to report initial fact finding in response to a human performance event, equipment failure, or other adverse condition.

“**COC**” or “**Contractor of Choice**” means a preferred or alliance Contractor with an established contract for performing a specific category of Work. Baseline Work is often awarded to a COC under a Blanket Contract where the specific work assignments have not been identified prior to Contract Award.

“**Contractor’s Quality Program**” will have the meaning in Section 12.1.1.

“**Covered Work**” means Work which involves (i) an operations, maintenance, or emergency-response function regulated by 49 C.F.R. Parts 192, 193, or 195 that is performed on a pipeline or on a Liquefied Natural Gas facility; or, (ii) operation of a commercial motor vehicle and meets the additional conditions described in 49 C.F.R. Part 382.103.

“**Customer**” means an Exelon Utility’s residential, commercial or industrial customer whose property or service is or may be affected by Contractor’s performance of the Work.

“**DART Rate**” means Days Away Restricted Transfer Rate.

“**Design Criteria**” means a document or document setting forth the criteria for the engineering, design or construction work scope.

“**DOT**” means the U.S. Department of Transportation or its successor.

**“DOT Regulations”** means 49 C.F.R. Parts 40, 192, 193, 195, 199, and 382.

**“Environmental Management System” or “EMS”** means the applicable Exelon Utility’s Policies and Procedures to satisfy the requirements of the Exelon EMS Program (EN-AC-10) and ISO 14001:2004. EMS is a continual cycle of planning, implementing, reviewing, and improving the processes and actions that an organization undertakes to meet its business and environmental goals. Built on the "Plan, Do, Check, Act" model, the EMS enables the organization to programmatically manage its environmental risks and liabilities. Simply, the EMS is a process to manage environmental risk.

**“Exelon Utility”** means Baltimore Gas and Electric Company (“BGE”), Commonwealth Edison Company (“ComEd”), PECO Energy Company (“PECO”), or any electric or natural gas transmission or distribution companies operated by a subsidiary of Exelon Corporation.

**“FFD Coordinator”** means the Buyer Fitness for Duty Program Coordinator or other individual designated by Buyer to coordinate with Contractor regarding compliance with the requirements of Article 2 of these Special Terms and Conditions.

**“Gas Out”** means Contractor has pressurized a gas utility with natural gas.

**“LWDC Rate”** means Lost Work Day Case Rate.

**“OCC”** means the applicable Exelon Utility’s Operations Control Center.

**“OSHA Recordable Rate”** means number of injuries times 200,000 divided by work hours within a specific period.

**“Phase 1”** means conceptual study or design phase.

**“Phase 2”** means detailed design and project planning phase.

**“Phase 3”** means execution or construction phase.

**“PPE”** means Personal Protective Equipment.

**“Quality-Related Records”** means Contractor’s Quality Assurance Manual; other quality control policies, procedures, and processes

**“Record Set of Drawings”** will have the meaning in Section 6.3.1.

**“Severity Rate”** means days away times 200,000 divided by the work hours during a specific period

**“SWP”** means Safe Work Plan.

**“Web-based Repository”** means ISNetworld (<https://www.isnetworld.com/Customers.aspx>) or such other third-party managed on-line reporting service and repository of Contractor’s OSHA hours as may be specified in the Purchase Order.

**“Work Package”** means the collection of electronic work order related documents, including scope of Work document, prints and unit sheets with estimates that identify what Work is to be performed and contains all the information necessary to enable efficient work scheduling and execution.

“**Work Package Checklist**” means a document describing the required contents of the Work Package.

## ARTICLE 2. POLICIES, PROCEDURES, AND SPECIFICATIONS

**2.1. Policies and Procedures.** The Policies and Procedures listed below are applicable to Work performed by COCs, and as otherwise specified in the Purchase Order. These Policies and Procedures are available to Contractors on the CIWP.

2.1.1. PC-ED-P022-R0001, Projects and Contracts Contractor Accrual Guidelines

2.1.2. PC-ED-2016, Contractor Compliance and Management of Contractors

2.1.3. PC-ED-2017, Contractor Orientation

2.1.4. PC-ED-2018, Contractor Information Web Page

2.1.5. PC-EU-0013, Invoice Review and Approval Procedure

2.1.6. PC-EU-1021 Change Order Procedure

2.1.7. EA-ED-104, Event Free Clock Procedure

2.1.8. EA-EU-P011 – EU Human Performance Program

2.1.9. Applicable Exelon Utility “Rules to Dig By”

2.1.9.1. BGE Rules to Dig By

2.1.9.2. CM-CE-080011, ComEd Rules to Dig By

2.1.9.3. CM-PE-080010, PECO Rules to Dig By

2.1.10. Applicable Exelon Utility Safety Rule Book

2.1.10.1. SA-BE-001 et seq., BGE Safety Manual

2.1.10.2. SA-CE-4032, ComEd Safety Rule Book

2.1.10.3. PECO Safety Rule Book

2.1.11. Applicable Exelon Utility Environmental Policies and Procedures

2.1.11.1. BGE

2.1.11.2. ComEd

2.1.11.3. PECO

**2.2. Construction and Material Specifications.**

Contractor will perform all Work for Exelon Utilities in accordance with Buyer's Construction and Material Specifications. Buyer's Construction and Material Specifications are available to Contractors on the CIWP.

**ARTICLE 3. COMMUNICATIONS**

**3.1. Incident and Event Notification.**

3.1.1 Contractor will immediately notify the OCC and Buyer's Designated Representative of all incidents and events as defined in the EA-ED-104, Event Free Clock Procedure.

3.1.2. All Contractors will notify Buyer Designated Representative (and task manager where applicable) if any Contractor Personnel are involved in any incident involving personal injury, damage to electric, gas, water or other utilities, or customer property; traffic accident within the Work Site; environmental violations; investigations, or litigation, Customer or third-party complaints relating to the course of Work.

**3.2 Communications.**

3.2.1. Contractor will have the capabilities to access Buyer's internet websites and services, transmit and receive emails with attachments (e.g., MS-Word, MS-Excel, Adobe Acrobat), and map and identify location (e.g. GPS).

3.2.2. Contractor will provide and maintain mobile / cellular telephone communication links with and between each of its work crews.

**ARTICLE 4. CUSTOMER AND PUBLIC RELATIONS**

The provisions of Article 4 are only applicable to Work performed by COCs, or as otherwise specified in the Purchase Order.

**4.1. Customer Satisfaction.**

4.1.1. Contractor will review with all Contractor Personnel, the need to keep Buyer's Customers satisfied with Contractor performance.

4.1.2. Reviews will be conducted when each Contractor Personnel first performs Work for Buyer, and on an annual basis thereafter.

4.1.3. Contractor will provide documentation of such reviews as requested by Buyer.

**4.2. Customer and Public Contacts and Interfaces.** Contractor will manage its contacts and interfaces with the Buyer's Customers and public in a manner that enhances the reputation and image of the Buyer and will use all practical means to prevent complaints from Customers and the public, including:

4.2.1. Contractor will minimize noise levels at Sites.

4.2.2. Contractor will manage without disagreement or dispute access to private property for the purpose of conducting Work.

4.2.3. Contractor will notify any Customers whose service will be interrupted forty-eight (48) hours before the start of Work in written format as approved by Buyer. Notice will include contact information, start date and time, completion date and time.

4.2.4. Contractor will minimize scheduled electrical interruptions.

4.2.5. Contractor will notify all property owners or occupants verbally or through the use of a door hanger of planned Work that will be performed on their property or which will require access to their property. Notice will include contact information, start date and time, completion date and time.

### **4.3. Customer and Third Party Claims and Complaints.**

4.3.1. Contractor will promptly respond to and investigate all complaints pertaining to the Work.

4.3.1.1. Each complaint must be reported promptly to the Buyer's Designated Representative verbally.

4.3.1.2. Contractor will submit a follow-up written report if requested by Buyer.

4.3.2. Contractor will maintain a written record of all complaints and their resolution.

4.3.3. Contractor will resolve damage claims from Buyer's Customers and third parties arising out of Contractor's performance of the Work in a professional and timely manner.

4.3.4. Complaint records will be maintained for a period of twenty-four (24) months from the date the complaint is resolved and will be subject to audit by Buyer.

## **ARTICLE 5. GOVERNMENTAL AUTHORITIES, PERMITS AND INSPECTIONS**

### **5.1. Governmental Authorities**

5.1.1. Contractor will ensure all Contractor Personnel conduct themselves in a professional manner when interacting with Governmental Authorities.

### **5.2. Public Roadways.**

5.2.1. Contractor will make all necessary arrangements with and notifications to Governmental Authorities for the use of public roadways traveled by the Contractor's vehicles and equipment in the course of the Work.

5.2.2. Contractor will schedule its work to comply with the applicable Law concerning road use, including posted roads.

### **5.3. Inspections.**

5.3.1. The Contractor will notify Buyer's Designated Representative immediately when any Governmental Authority performs a Site inspection of Work performed on Buyer's property.

## ARTICLE 6. WORK MANAGEMENT PROCESS

The provisions of Article 6 are only applicable to Work performed by COCs, or as otherwise specified in the Purchase Order.

### 6.1. Work Packages.

6.1.1. Contractor will perform only the authorized Work specified in the Buyer's Work Package

6.1.2. Contractor will utilize the Work Package Checklist, perform field walk downs, and verify design-to-field conditions prior to mobilization and scheduled start of on-Site Work.

6.1.3. The Contractor will mark up all affected Buyer's Drawings to show "As-Built" conditions and will constitute revisions to Buyer's drawings following completion of the Work.

### 6.2. Work Management Interface.

6.2.1. Contractor will provide daily electronic report (in most current format) to Work Management, Operations, Construction & Maintenance and Alliance Management indicating each crew's job assignments.

6.2.2. Contractor will participate in all required Work management calls and meetings to ensure schedule adherence. Participate in weekly accountability meetings to address any schedule commitments not fulfilled.

### 6.3. Submittals.

6.3.1. Contractor will keep a record set of reference Drawings and sketches ("Record Set of Drawings") at the Site on which Contractor will clearly and accurately record all approved changes and/or additions to the Work made to meet field conditions. The record set of drawings will be used for this purpose only, and will be delivered to the Buyer's Designated Representative, in good condition, as an accurate record of the Work, prior to Final Acceptance.

6.3.2. Buyer reserves the right to send representatives to the office of Contractor, its Subcontractors and vendors to examine drawings during the design and drafting phase to ensure conformance with the Contract Documents.

6.3.3. As-Built Packages and Record Sets of Drawings will be submitted to Buyer's Designated Representative within ten (10) Business Days (five (5) Business Days for PECO) of Final Completion. Completed As-Built Packages will contain copies of any Contractor QC inspection information. Rejected As-Built Packages must be corrected and re-submitted within forty-eight (48) hours. Gas Out As-built will be submitted to OCC daily.

6.3.4. Copies of any calculations, assumptions made during the calculations, and other relevant information will be submitted to Buyer's Designated Representative as part of the Submittals.

### 6.4 Scope Changes

6.4.1. Contractor will notify Buyer's Designated Representative and obtain written authorization before making any alteration in the scope of Work in the Work Package. Contractor will follow the PC-

EU-1021, Change Order Procedure.

6.4.2. Contractor will submit a completed Scope Change Notice in the form prescribed by Buyer to Buyer's Designated Representative per PC-EU-1021.

## **ARTICLE 7. DAMAGE TO PROPERTY AND GENERAL HOUSEKEEPING**

### **7.1. Damage to Customer, Public and Third-Party Property.**

7.1.1. Contractor will take reasonable care to protect and minimize damage to Customer, public and, third party property, including buildings, streets, sidewalks, parking lots, yards, trees and ornamental vegetation and other improvements.

7.1.2. Contractor will report promptly to Buyer's Designated Representative any damage to Customer, public and third-party property in accordance with the Contract Documents.

7.1.3. Contractor will repair any damage to resulting to Customer, public and third-party property from Contractor's operations where required by applicable Law or Exelon Utility contract with customer.

7.1.4. Contractor will restore all damaged areas in a workman-like manner, including:

7.1.4.1. Seed, rake and water for grass, and

7.1.4.2. Patch or replace asphalt and paving according to applicable municipal or state standards, if required by Purchase Order.

7.1.5. Repairs will be completed within the time-frames specified in the Contract Documents and Buyer's Policies and Procedures.

7.1.5.1. If no time-frames are specified in the Contract Documents or Buyer's Policies and Procedures, repairs will be completed within sixty (60) days of completion of the Work, weather permitting.

7.1.5.2. Contractor will develop and maintain a permanent repair schedule for all surface restoration that cannot be completed at the time of the completed Work.

7.1.5.3. Contractor will provide Buyer's Designated Representative with a daily repair crew location report.

7.1.5.4. Contractor will provide written notification to Customers, Governmental Authorities, and third parties of scheduled repairs.

7.1.6. Contractor will compensate Customers, Governmental Authorities, and other third-parties, in a timely manner, for all damages resulting from performance of the Work that cannot be repaired.

### **7.2. Work Site Housekeeping**

7.2.1. Contractor will maintain good housekeeping and orderliness at all times.

7.2.2. Contractor will continuously remove rubble, scrap material and construction debris

generated by the Work from the Site.

7.2.3. The Contractor will thoroughly clean the Site prior to the end of each workday.

7.2.4. Contractor will promptly remove any dirt, mud, construction debris, etc. deposited by Contractor on any street.

7.2.5. The use of any existing substation for show-up and/or storage of Material and Contractor's equipment will not be permitted (other than those substations where the Work will be performed).

7.2.6. Contractor will not use electrical power from a Buyer's source without prior approval for the Company.

## **ARTICLE 8. BUYER-FURNISHED MATERIAL AND PROPERTY**

### **8.1. Buyer-Furnished Material and Property.**

8.1.1. Contractor Personnel will not borrow, use, or operate Buyer-Furnished Material or Property without approval of Buyer's Designated Representative.

8.1.2. If approval is granted, Contractor will ensure that Contractor Personnel using Buyer-Furnished Property are properly trained and provide written documentation of that training to Buyer's Designated Representative.

8.1.3. Contractor will return surplus Buyer-Furnished Material and Buyer Furnished Property to the Buyer storeroom designated in the Work Order, Purchase Order or by Buyer's Designated Representative.

8.1.4. All Buyer-Furnished Material and Buyer Furnished Property will be returned in an orderly manner, tagged with its catalog ID number and with the proper documentation and material return ticket indicating the Work Order associated with the material.

8.1.5. Surplus wire and cable (assuming in good condition), regardless of length, will be returned using a Material Return Ticket to the location of original distribution.

### **8.2. Salvage**

8.2.1. Contractors will salvage all material and equipment removed from service by returning to scrap dumpsters at Buyer's facilities or by other arrangements made with Buyer's Designated Representative and Buyer's Investment Recovery Department.

## **ARTICLE 9. SAFETY AND SECURITY**

### **9.1 Audits and Reports**

9.1.1. Safety Audits.

9.1.1.1. Contractor will conduct safety audits on all Work in progress for Buyer.

9.1.1.2. Results of safety audits are to be reported to Buyer as requested.

**9.1.2. Safety Reports**

9.1.2.1. Contractor will submit a semi-annual safety report to Buyer. The report will contain:

9.1.2.1.1. A summary of activities undertaken in the implementation of the Contractor's Safety Program;

9.1.2.1.2. The current LWDC rate, DART Rate, Severity Rate, and Recordable Rate. Where applicable rates are to be provided for both Buyer and non-Buyer Work; and

9.1.2.1.3. A roll up of safety audit findings from Buyer projects. This should include; number of audits conducted and the most common safety violation found.

9.1.3. All OSHA hours and any other required information will be entered into the Web-based Repository.

**9.2. Clothing and PPE**

9.2.1. Contractor Personnel will comply with the clothing and PPE requirements in the applicable Buyer's Safety Policies and Procedures.

9.2.2. Contractor will ensure that Contractor Personnel hard hats will be easily distinguishable from those of Buyer's employees and other contractors.

**9.3. Digging and Excavation**

9.3.1. The Contractor will follow the applicable Buyer's Prudent Digging Techniques Procedure (Rules to Dig By) and any other applicable "one call", locating or excavation regulations.

9.3.2. The Contractor will be required to perform a field walk down to ensure Rules to Dig By compliance along with design and Construction Standards compliance.

**9.4. Electrical Safety**

9.4.1. Contractor will be required to follow Owner's Lock Out-Tag Out Switching Request System (SRS) and Minimum Approach Distance (MAD)/Clearance Requirements.

9.4.2. All Contractor Personnel performing Work in a Buyer's substation will attend a safety / environmental / security orientation which meets or exceed the requirements established by the applicable Exelon Utility.

**9.5. Orientation and Training**

9.5.1. Contractor will conduct pre-Work orientation sessions for all Contractor Personnel under its direction. The orientation will address all environmental, occupational health and safety rules, job hazard identification and mitigation along with the proper use of personal protective equipment associated with the Work to be performed on Site.

9.5.2. Contractor will document Contractor Personnel participation in these pre-Work orientation sessions, and make this documentation available upon request to Buyer's Designated Representative.

9.5.3. Contractor will provide a safety orientation for each Subcontractor before Subcontractor mobilization at the Work Site, including review of the SWP specific hazards, daily safety briefing requirements, and reporting requirements.

**9.6 Safe Work Plans.** The provisions of Section 9.6 are only applicable to Work performed by COCs, or as otherwise specified in the Purchase Order.

9.6.1 Contractor will prepare a SWP, review it with the Buyer's Designated Representative and Safety Professional five (5) business days prior to mobilizing to the Site, and receive Buyer's approval before executing Work at the Site.

9.6.2. The SWP will include as a minimum a description of the work to be performed, the hazards, required personnel protective equipment, and other safety requirements.

9.6.3. The SWP will also include a requirement for notification of Buyer and others if an incident occurs.

9.6.4. Contractor will maintain a summary of corrective actions from all ACE, RCI, CR or Near Miss incidents, as well as those of other contractors reported to the Contractor by Buyer

9.6.5. Contractor will incorporate corrective actions from previous safety incidents into the Contractor's Safe Work Plans. The Contractor may request information from Buyer on the appropriate content of SWPs.

**9.7. Site Readiness.** The provisions of Section 9.7 are only applicable to Work performed by COCs, or as otherwise specified in the Purchase Order.

9.7.1. Contractor will ensure job Site readiness in advance of the Work beginning.

9.7.1.1. Contractor will coordinate with Customer to have all obstacles in the path of the Work removed as required.

9.7.1.2. The Contractor will bring to the attention of Buyer's Designated Representative any conditions where the Work scope would cause interference or prevent accessibility for maintenance and operations.

**9.8. Traffic Control**

9.8.1. Unless otherwise specified in the Purchase Order or Work Package, Contractor will provide the required traffic control according to applicable traffic control standards developed or adopted by the permit issuing agency or regulatory authorities.

9.8.2. Police coverage will be coordinated by the Contractor as required in the Purchase Order.

## ARTICLE 10. WORK SUBJECT TO DOT REGULATIONS

This Article 10 applies to Contractor and Subcontractors insofar as Contractor Personnel perform Covered Work for Buyer on any Exelon Utility's premises, facilities, or at any other location.

**10.1. Drug, Alcohol and Controlled Substances.**

Contractor will comply with applicable Law regarding use of and testing for drugs, alcohol, and

controlled substances.

10.1.1. Contractor will comply with all applicable provisions of 49 C.F.R. Parts 199 and 382 with respect to any Contractor Personnel who is or will be assigned to perform Covered Work.

10.1.2. Contractor will conduct all drug, alcohol, and controlled substance testing relating to Covered Work in accordance with the provisions of 49 C.F.R. Parts 40, 199, and 382.

10.1.3. Contractor will ensure that its drug, alcohol, or controlled substance testing programs comply with any applicable state or local Laws regarding the administration and use of drug and alcohol tests in employment, including:

10.1.3.1. Maryland: MD Code, Health-General, Title §17-214

10.1.4. Contractor will develop and submit to Buyer's FFD Coordinator for approval an Alcohol Misuse Prevention Plan and an Anti-Drug Plan for Covered Work, to the extent required under 49 C.F.R. Parts 199.102 and 199.202.

10.1.5. Buyer authorizes Contractor to implement and conduct its own alcohol and drug testing, education, and training programs for Covered Work in accordance with 49 C.F.R. Parts 40 and 199 after Buyer approval of Contractor's Alcohol Misuse Prevention Plan and Anti-Drug Plan,.

10.1.6. Contractor grants Buyer, the Administrator of the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), and any authorized state representative access to all properties and records for the purpose of monitoring Contractor's compliance with 49 C.F.R. Parts 40 and 199 as it relates to the Covered Work.

## **10.2. Buyer's Policies and Procedures.**

Contractor will comply with applicable Buyer Policies and Procedures pertaining to the use of and testing for drug, alcohol, and controlled substances while performing Covered Work, and while on Buyer's premises.

10.2.1. Applicable Policies and Procedures include:

10.2.1.1. HR-AC-16 – Exelon Drug and Alcohol Policy;

10.2.1.2. HR-AC-301 – Post-Accident Testing Procedure, and

10.2.1.3. Other Policies and Procedures listed in the Purchase Order or other Contract Documents.

10.2.2 Buyer will post to Contractor Information Web Page copies of all applicable Policies and Procedures.

## **10.3. Compliance by Contractor Employees.**

10.3.1. Prior to commencing Covered Work, Contractor must provide Buyer's FFD Coordinator with the full name(s) and Social Security number(s) of Contractor Personnel to be used in the performance of Covered Work who have been employed previously by Buyer or its Affiliates.

10.3.2. Contractor will require all Contractor Personnel assigned to perform Covered Work to

comply with the provisions of 49 C.F.R. Parts 199 or 382 as applicable, and any state or local Laws pertaining to the same subject matters.

10.3.3. Contractor will require all Contractor Personnel assigned to perform Covered Work to comply with all Buyer Policies and Procedures identified herein and in the Contract Documents.

10.3.4. Contractor will provide all Contractor Employees who are assigned to perform Covered Work with appropriate training and education on compliance with the applicable Law and Buyer's Policies and Procedures referenced in these Special Terms and Conditions, including relevant supervisors or other Contractor Employees who must be trained and educated on reasonable suspicion of the use of alcohol or controlled substances.

10.3.5. Contractor will not authorize any individual to perform Covered Work unless that individual has met the requirements of 49 C.F.R. Parts 199 or 382, as applicable, and Buyer's Policies and Procedures.

10.3.6. Buyer retains the right to grant, deny, suspend or revoke authorization for Contractor Personnel to perform Covered Work in its sole discretion, and Buyer's decision will be conclusive and binding upon Contractor. However, the fact that Buyer has not denied authorization to an individual will not relieve Contractor from its responsibilities and liabilities hereunder to ensure that such individual meets the requirements for authorization to perform Covered Work.

10.3.7. Contractor Personnel who have a positive alcohol or drug test, or who refuse to submit to required testing while performing Covered Work will not be permitted to perform any Work for Buyer or its Affiliates.

10.3.8. Nothing in these Special Terms and Conditions will create a relationship of employment between Buyer and Contractor Personnel. Contractor will remain fully responsible for the selection, training, discipline, fitness, and skill of all Contractor Personnel.

#### **10.4 Contractor's Certification of its Compliance.**

10.4.1. Contractor will provide any information or compliance reporting to DOT as required under 49 C.F.R. Parts 40, 199, and 382.

10.4.2. Contractor will provide the following information to Buyer:

10.4.2.1. Contractor must submit copies of its Alcohol Misuse Prevention Plan and Anti-Drug Plan to the Buyer's FFD Coordinator, and Buyer must approve that Plan, prior to beginning any Covered Work for Buyer.

10.4.2.2. Contractor will notify Buyer's FFD Coordinator upon the removal of any Contractor Personnel from Covered Work in accordance the DOT regulations or Buyer Policies and Procedures.

10.4.2.3. Contractor will furnish to Buyer's FFD Coordinator] the full name and social security number of any Contractor Personnel removed from Covered Work under the DOT Regulations or Buyer's Policies and Procedures.

10.4.2.4. Before Contractor may return Contractor Personnel to Covered Work following removal of his or her authorization, Contractor will provide certification to Buyer's FFD

Coordinator that Contractor and the Contractor Personnel have completed all return to work requirements imposed by the DOT regulations and Buyer's Policies and Procedures.

10.4.2.5. Contractor will forward information identified in the DOT reporting requirements under 49 C.F.R. Parts 199.119, 199.229, and 382.403, to Buyer's FFD Coordinator] on a quarterly basis.

10.4.2.6. Contractor will certify to Buyer's FFD Coordinator on an annual basis that it has conducted and completed education and training of Contractor Personnel.

10.4.3 Contractor's non-compliance with the any of the requirements in these Special Terms and Conditions may result in revocation of any or all authorizations for Contractor to perform Covered Work.

### **10.5. No Additional Compensation**

Contractor will not be entitled to any additional compensation for compliance with Article 10 of these Special Terms and Conditions beyond the Contract Price.

## **ARTICLE 11. ENVIRONMENT**

### **11.1. Environmental Compliance Plan.**

11.1.1 Contractor will prepare an Environmental Compliance Plan for all non-Emergency Work and submit it to Buyer's Designated Representative for review at least thirty (30) days prior to Commencement of Work, or as otherwise specified in the Project Schedule.

11.1.2. The Environmental Compliance Plan will:

11.1.2.1. Assess the potential for the Work to adversely affect the environment;

11.1.2.2. Identify applicable Laws;

11.1.2.3. Identify Contractor's proposed method of complying with applicable Laws;

11.1.2.4. Provide schedule for application and approval for all necessary permits and licenses, including necessary notifications and publications, to be incorporated into Project Schedule.

11.1.2.5. Provide a life cycle analysis for all Materials selected for use on an individual project. The analysis shall indicate a listing of all Materials proposed for use and an assessment of the potential environmental impacts associated with the manufacturing, use and disposal of Material. Contractor shall use Materials that have the lowest adverse environmental impact based on their lifecycle analysis, during the performance of their work.

### **11.2. Environmental Management System ("EMS")**

11.2.1. Contractor will comply with Buyer's EMS, including Buyer's applicable Environmental Policies and Procedures..

11.2.2. Contractor Personnel will complete and document EMS training and provide to Buyer as requested within twenty-four (24) hours of the request.

### 11.3. Treatment, Disposal and Recycling Facilities

11.3.1. Contractor shall submit the location(s) of treatment ,disposal or recycling facilities for all material wastes for approval of to Buyer's Environmental Services (ES) group, per Section 25.1 of the Terms and Conditions, prior to commencement of Work.

11.3.2. Containers used for transportation of waste materials must be suitable for the material being transported.

11.3.3. All oil-filled and formerly oil-filled equipment/waste materials must be transported in sealed, lined and tarped containers.

11.3.4. Within thirty (30) Days of the date of disposal, the Contractor shall provide the Buyer with copies of all manifests, permits, certificates and any other documentation relating to the disposal of waste materials generated during the Work.

### 11.4. Spills, Releases and Leaks

11.4.1. In addition to the requirements of Section 24.5.5 of the Terms and Conditions, Contractor will immediately report all spills, releases and leaks of any substance to the environment to Buyer's Operation Control Center (OCC) and Buyer's ES group.

11.4.2. Contractor will cease all Work in the area affected by a spill, release, or leak and implement containment measures to prevent the release, movement, spread, or disturbance of hazardous constituents and to protect Persons, property and the environment.

11.4.3. Final spill, release or leak cleanup and material disposal should be completed in coordination with the Buyer's ES group, which may include using the Buyer's environmental Contractor Of Choice (COC).

### 11.5 Soil Management

11.5.1. Contractor will perform the testing, excavation, handling, transportation and disposal of soils generated from all Work Sites in accordance with applicable Law and Buyer's Policies and Procedures.

11.5.2. Contractor will identify all soil storage and disposal locations prior to the commencement of any Work. Contractor will provide documentation to the Buyer on a monthly basis which will, at a minimum, include:

11.5.2.1. Disposal/recycling facilities utilized;

11.5.2.2. Volumes generated from each Purchase Order; and

11.5.2.3. All testing and confirmation of testing performed by or for Contractor to document the soil quality.

### 11.1.6. Water Management

11.6.1. Prior to commencement of any Work, Contractor will provide details to Buyer on the proposed handling, containment, treatment, discharge, or disposal of any/all water that may be encountered as part of this Work.

11.6.2. Contractor will perform dewatering of manholes and excavations in compliance with the requirements established by the Buyer's ES group.

11.6.3. Contractor will perform all necessary studies to document water quality and conditions

11.6.4. Contractor will submit to Buyer's ES group copies of all necessary environmental permits, approvals and licenses to perform work for the Buyer, including, but not limited to, permits for dewatering (withdrawal) and discharge prior to commencement of the Work.

11.6.4. Any on-Site treatment of water requires approval by the Buyer's ES group.

### **11.1.7. Land Disturbances**

11.17.1. Prior to commence of the Work, Contractor will perform all studies required by applicable Law to perform the Work including, but not limited to, geotechnical, environmental, construction, wetland, storm water, erosion and sedimentation , and zoning studies.

11.17.2. Contractor will submit copies of the study reports, and all related permits, licenses and other documentation to the Buyer prior to commencement of any Work.

11.7.3. Contractor will submit a detailed Horizontal Directional Drilling (HDD) plan to the Buyer's Designated Representative for review prior to commencement of any HDD Work, which will include, at a minimum, the following:

11.7.3.1. Details regarding all permits, environmental/engineering studies

11.7.3.2. The HDD route;

11.7.3.3. Measures to mitigate environmentally sensitive areas;

11.7.3.4. Drilling fluid details;

11.7.3.5. Plans for handling of inadvertent drilling fluid releases; and

11.7.3.6. Plans for handling, storage and disposal of drilling wastes prior to the commencement of any Work.

### **11.8. Demolition Work**

11.8.1. Hazardous Substances Assessment. Prior to the commencement of any demolition Work, Contractor will perform and submit to Buyer's ES group a Hazardous Substances assessment to identify any Hazardous Substances that require removal, and/or abatement (e.g., lead, mercury, PCBs, asbestos, radiation sources, or oil filled equipment) prior to commencement of the demolition activities.

11.8.2. Contractor will verify all materials have been removed prior to commencement of any demolition activities.

## **ARTICLE 12. QUALITY ASSURANCE (QA)**

The provisions of Article 12 are only applicable to Work performed by COCs, or as otherwise specified in the Purchase Order.

## 12.1. Quality Control, Inspections and Acceptance of Work.

12.1.1. The Contractor is responsible for quality control and conformance to Contract Documents during the course of the Work.

12.1.2. Buyer will perform periodic Quality Assurance (“QA”) inspections and annual audits to ensure the Contractor’s Quality Program is effective and in compliance with the Contract Documents. Deviations and nonconformances identified must be completed by the specified completion date in the applicable inspection or audit report.

12.1.3. Contractor quality control inspections will be conducted by subject matter experts dedicated to the quality control function and not by the Contractor Personnel performing or supervising the Work. Records of the inspections will be maintained for a minimum of five years.

12.1.4. Buyer may require Contractor to conduct specific levels of quality control inspections on as needed, i.e., Top Priority Circuit (TPC), Summer Critical, governmental commitment, Ward commitment, etc.

12.1.5. When a Work Package is returned and Work is progressed to “completed” status, Contractor will execute a Certificate of Final Completion attesting to the quality and completeness of work.

## 12.2. Contractor’s Quality Program.

12.2.1. The Contractor will maintain a documented quality program based on the requirements identified in ANSI/IASQC C1-1996 (Specification of General Requirements for a Quality Program). Contractors will be responsible for obtaining a copy of the standard as well as assuring that the current revision of the standard is used (a copy can be purchased at [www.ansi.org](http://www.ansi.org)).

12.2.2. The Contractor will not be required to obtain independent or third party quality assurance certifications, but should comply with the ANSI requirements and any additional requirements that have been identified in this contract. Document retention policies identified in this contract supersedes those identified in ANSI/IASQC C1-1996.

12.2.3. The Contractor will be responsible for designating a Quality Manager to implement the Quality Control Program. The Quality Manager will report to a management level such that this individual has the required authority and organizational freedom, including sufficient independence from cost.

12.2.4 The Quality Manager will ensure all work is performed according to the contractor’s Quality Program as well as all applicable Buyer policies, procedures, and specifications. Acceptance of the Contractor’s Quality Program by Buyer does not relieve the Contractor of the obligation to comply with the requirements of the procurement documents.

12.2.5. The Contractor’s Quality Program must be kept current and adhered to by Contractor as accepted; failure to do so is cause for termination of Purchase Orders.

12.2.6. If Contractor’s Quality Program is subsequently found to be ineffective or inadequate in providing acceptable quality control, Buyer reserves the right to require necessary revisions, corrective action(s), or both.

12.2.7. Contractor will ensure its Subcontractor(s) implement and maintain an effective Quality Program that complies with the Contract Documents.

12.2.8. Nonconformances in the Contractor's Quality Program or conditions adverse to quality will be documented and reported to the Buyer's Designated Representative immediately. The representative will determine appropriate corrective actions up to and including Purchase Order termination. Corrective actions must be completed by specified time-period in the Contractor's Quality Program. Significant non-conformances adverse to Quality may result in a stop Work order by Buyer.

### **12.3. Quality Control Documentation**

12.3.1. Contractor's Quality Program will be documented in the Contractor's Quality Manual; which Contractor will submit to Buyer thirty (30) Days prior to commencement of Work or by such other Milestone Date specified by Buyer's Designated Representative.

12.3.2. Contractor's Quality Manual will be kept current and made available to Buyer or its designated agents during auditing and surveillance activities. The contractor will maintain a revision history of changes made to documents.

12.3.3. Contractor will require its Subcontractor(s) to furnish Quality Control Procedures, Process, and Quality Assurance Manual for review and acceptance by Buyer upon Buyer's request.

12.3.4. All Contractor Quality-Related Records, procedures, and Contractor Personnel qualifications will be available for examination by Buyer or its authorized agent.

12.3.5. Contractor will maintain all Quality-Related Records for a five (5) year period. These records will identify the actual scope of Work performed, reference the Buyer Work Order number and Quality Control program information. Quality-related records pertaining to the Work will not be destroyed or otherwise disposed of without written permission of Buyer prior to expiration of the 5-year period.

12.3.6. A copy of any Quality Control inspection reports will be provided with the completed Work Package. Inspection records will contain documented evidence that inspections, tests, or analyses required by the Buyer procurement documents, specifications, or drawings referenced therein have been satisfactorily completed.

## **ARTICLE 13. THIRD-PARTY VERIFICATION REQUIREMENTS**

If Contractor is performing Work for an Exelon Utility, Contractor will become a member of the Web-based Repository directed by Buyer.

## **ARTICLE 14. ADDITIONAL INVOICING REQUIREMENTS**

### **14.1. Submission**

14.1.1. Contractor will submit invoices in accordance with PC-EU-0013, Invoice Review and Approval Procedure and PC-ED-P022-R0001, Projects and Contracts Contractor Accrual Guidelines.

14.1.2. Contractor will submit a draft invoice with corresponding pending CPA's in Passport to the Buyer's Designated Representative by the fifth (5<sup>th</sup>) of the month following the month in which the Work was performed and in accordance with PC-EU-0013, Invoice Review and Approval Procedure.

14.1.3. Invoices for Services rendered the previous month must be received by the fifteenth (15th) of the month following the month in which the Work was performed when the Contract Management Passport Module is used to submit invoices.

14.1.4. Contractor will not submit invoices for less than two thousand dollars (\$2,000) unless for Final Invoice.

## **14.2. Format**

### 14.2.1. Equipment.

14.2.1.1. Invoices will separately itemize each category of equipment as a separate line item and will indicate whether the equipment was Contractor-owned, Subcontractor-Owned, or leased.

14.2.1.2. Equipment includes major construction equipment such as cranes, bucket trucks, dump trucks, semis, pick-up trucks, back hoes, tractors, bull dozers, pole trailers, etc., complete with appurtenances such as boom, bucket, etc.

14.2.1.3. Fuel, insurance, lubricants, maintenance, repairs (including parts) and other expenses are included in the equipment rates except as otherwise expressly specified in the Purchase Order.

### 14.2.2. Other Materials.

14.2.2.1. Invoices will separately itemize each type of Material as a separate line item that is either an actual part of the finished Work or utilized in the performance of the Work , including consumables and multi-use supplies such as road plates, lumber, chains, forms etc.

### 14.2.3 Labor.

14.2.3.1. Invoices will separately itemize and categorize Contractor Personnel by job classification, such as craftsmen (e.g., apprentices, journeymen, foremen, and/or general foreman), operators of leased equipment; professionals, and supervisory personnel, and whether such Contractor Personnel are Contractor's employees or Subcontractor employees.

14.2.3.2. Invoices will separately itemize subsistence allowances (i.e., per diem) and travel expenses.

14.2.3.3. Invoices will separately itemize federal and state employee Medicare, Social Security, unemployment insurance and other government-required contributions for each Contractor Personnel.

### 14.2.4. Miscellaneous.

14.2.4.1. All other charges that do not fit into the equipment, other Material, or labor categories will be itemized as miscellaneous charges.

14.2.5. Invoices will separately itemize all associated mark-ups, overhead and profit for each line item.

14.2.6 Invoices will separately itemize mobilization, demobilization and transportation to-and-from the Site charges as separate line items.

**14.3. CPAs.**

14.3.1. Each CPA will include the following information (code block) for each Work Order and will be broken out by equipment, other Materials, labor, and miscellaneous.

<b>1.1. ID</b>	<b>ys</b>	<b>Work Task</b>	<b>Actvy</b>	<b>T C</b>	<b>F Cntr</b>	<b>Proj</b>	<b>Oper</b>	<b>R Cntr</b>	<b>Company</b>

14.3.2. CPAs must indicate percent of work completed.

14.3.3. CPAs must indicate the correct performance period.

14.3.4. CPAs are anticipated to be approved by the tenth of each month.

**ARTICLE 15. CENTRALLY MANAGED PROJECTS**

**15.1 Subcontracting Plan**

15.1.1. The Contractor will develop a subcontracting plan and review with the Buyer’s Designated Representative and project manager (if different). The subcontracting plan will identify the Subcontractors the Contractor plans to use for each scope of Work

**15.2. Material Plan**

15.2.1. The Contractor will develop a Material procurement plan and review with the Buyer’s Designated Representative and project manager (if different). The Plan will identify the types of Material to be procured by the Contractor versus furnished by Buyer.

**15.3. Scope Development**

15.3.1. For Centrally Managed Projects, when the scope of Work includes engineering or design for transmission or substation facilities, the Contractor will develop and maintain Design Criteria.

15.3.1.1. The Design Criteria will include project specific design requirements.

15.3.1.2. The Design Criteria will be submitted to the Buyer’s Engineer for comments and approval.

15.3.1.3. The Contractor will promptly revise and re-issue the Design Criteria when new or changed criteria are identified.

15.3.2. Contractor will provide appropriate personnel to support the scope development in each phase. Scope development will include site walk- downs, development of conceptual design including layouts and general arrangements, and planning sessions with the responsible engineering, estimating, and installation personnel to assure complete scope identification.

15.3.3. Scope development will not be considered complete at the end of Phase 1 or at the end of Phase 2 unless the responsible design engineer and responsible installer perform a joint walk-down using the latest available design drawings or as required by Buyer's Designated Representative.

15.3.4. Contractor will retain records related to approved scope, design, safety, cost estimates, forecasts, accruals, and invoices.

#### **15.4. Schedule Development**

##### 15.4.1. Project Schedule.

15.4.1.1. Contractor will develop a Project Schedule that will reflect a level of detail consistent with the Phase of the Work.

15.4.1.2. Two (2) weeks prior to beginning Work, the Contractor will submit to Buyer for acceptance a logic-based Project Schedule to a level of detail and description, which allows for tracking its day-to-day operations.

15.4.1.3. The standard activity duration will be less than three (3) Business Days unless an exception is granted by Buyer.

15.4.1.4. The Project Schedule will be resource- loaded, including critical materials and resources (manpower loading) and organized in a fashion acceptable to Buyer to support forecasting and budgeting.

15.4.1.5. The Project Schedule will be updated at least weekly to support weekly forecasts, identifying any changes in sequencing from the latest accepted Project Schedule. Project Schedule updates will utilize a Sunday data date and be submitted by the following Tuesday.

15.4.1.6 Any deviations in Contractor's performance of the Work from the latest accepted Project Schedule will require Buyer's Designated Representative approval.

##### 15.4.2. Milestone Date Schedule.

The Contractor will develop a Milestone Date schedule if requested by Buyer, showing pre-defined Milestones in the project.

15.4.3. Contractor will participate in schedule coordination meetings at the request of Buyer.

15.4.4. The Contractor will provide Project Schedule information, in the form of hard copies, or schedule software files, to Buyer for Buyer use in developing an integrated Buyer schedule of all projects. The Contractor will work with Buyer on protocols and standards to facilitate transfer and integration of Project Schedule information.

#### **15.5. Cost Estimating and Reporting.**

15.5.1. Contractor will, when included in its scope of Work, develop cost estimates for each Phase of the project. These cost estimates will be developed using Buyer templates, and conform to the level of detail by Buyer.

15.5.2. Phase 1 cost estimates, that is, the estimate prepared at the beginning of Phase 1, should capture the entire known engineering and construction scope, with identified contingency for unknowns.

Phase 1 estimates will be developed using conservative assumptions for quantities and productivity, but with best information for unit rates.

15.5.3. Phase 2 cost estimates, that is, the estimate prepared at the end of Phase 1 to be used to obtain authorization for Phase 2, will be a definitive estimate for the detailed design (engineering) and project planning scope, and a budgetary estimate for the construction and materials scope. The level of uncertainty of the budgetary construction and materials estimate will be identified by major scope item. Contingency (risk) items should be identified with estimated costs for each, and an indication of the time when the risk will be cleared.

15.5.4. Phase 3 estimates, that is, the estimate prepared at the end of Phase 2 to be used to obtain authorization for Phase 3, will be a definitive estimate for the entire scope of Work. This estimate will be developed using the detailed engineering and labor. Quantities will be based on the detailed engineering drawings produced in Phase 2, and should use known unit rates for material, equipment. Productivity rates will be based on the most recent, comparable data. Appropriate cost escalations will be included in the unit rates. All risks will be included “below the line” as contingency line items, with costs and clear dates estimated for each. Buyer will use the base cost estimate plus contingencies for budgeting. Contractor authorizations will be for the base estimate amounts. Buyer will write scope changes if the identified contingencies occur.

15.5.5. At the start of the project (each Phase), Contractor will prepare a forecast of estimated cost by month, or forecast, for the entire project. During project executions, Contractor will, each month, prepare and submit an updated forecast that includes actual costs from past months and updated estimated costs for each future month through the end of the project. These forecasts will include sufficient line items to communicate the work of each major scope element or subcontractor, or resource type. Contractor will seek guidance from the Buyer project manager or cost engineer on the format and level of detail of the forecast.

15.5.6. At a time specified by the Buyer project manager, Contractor will provide an “accrual” estimate also known as the work incurred report (“WIR”). This accrual is the value of the work performed in the calendar month, and in theory should be equal to the invoice that will be submitted for that month. The accruals will be broken down by sub-accounts as directed by the Buyer project manager. Contractor will identify the variance between the previously submitted forecast and the monthly accrual, and the Contractor will provide explanations for each variance.

15.5.7. Contractor will submit invoices per requirement contained in Article 14 herein and identify variances between the invoice and the accrual. Contractor will provide explanations for each variance. The invoices will show costs for each sub-account, consistent with the accruals.

## **15.6. Challenge Process.**

15.6.1. The Contractor will provide a Challenge Package, as directed by Buyer’s Designated Representative , for use in the Buyer project authorization process. The Challenge Package will include:

- 15.6.1.1. Scope Statement,
- 15.6.1.2. Detailed WBS Cost Estimate,
- 15.6.1.3. Cash Flow,
- 15.6.1.4. Project Schedule,

- 15.6.1.5. Risks and Assumptions List,
- 15.6.1.6. Contractors Proposal,
- 15.6.1.7. General arrangement drawings as applicable, and the
- 15.6.1.8. Project Diagram.

15.6.2. A Challenge Meeting is required before work can begin on Phase 2 or Phase 3 of the Work.

15.6.2.1. Contractor will participate, when requested by the Buyer project manager, in the Challenge meetings.

15.6.2.2. The Contractor will provide resolution to comments raised at the Challenge Meeting as directed by the Buyer project manager.

15.7. Contractors will support weekly face-to-face field construction meetings with the Buyer project team at which time they need to report out status, schedule updates, costs, risks, and issues.

15.8. Contractors are required to provide with an initial current month cost forecast approximately mid-month and a final forecast by the end of the third week of the current month to the Exelon Project Controls Representative. Additionally, the forecast must include a cash flow forecast for all future months totaling the full value of the contract release.

**EXHIBIT H – SPECIAL TERMS AND CONDITIONS FOR PERSONALLY IDENTIFIABLE INFORMATION**

**1. Personally Identifiable Information.**

1.1. Treatment of Personally Identifiable Information. Without limiting any warranty or obligation in the Terms and Conditions, and in particular the confidentiality provisions of the Terms and Conditions, during the Term and thereafter in perpetuity, Contractor will not gather, store, log, archive, use, or otherwise retain any Personally Identifiable Information to which it has gained access in connection with any Purchase Order in any manner, and will not disclose, distribute, sell, share, rent, or otherwise transfer any Personally Identifiable Information to any party or person, except (a) as expressly provided in the Purchase Order, or (b) as specifically and expressly directed in advance in writing by Buyer. Contractor represents, covenants, and warrants that Contractor will use Personally Identifiable Information in compliance with (i) the Purchase Order, and (ii) all applicable Privacy/Consumer Laws (as defined below). Contractor shall indemnify, hold harmless, and defend Buyer Parties against (1) any and all third party claims, damages, and losses sustained or incurred by the Buyer Parties resulting from any breach or nonperformance by Contractor of its obligations under this Exhibit H, and (2) any and all claims by governmental authorities for actual or alleged failure of an Buyer Party to comply with any applicable laws, including privacy laws, by reason of any act, omission, conduct, negligence, or default by Contractor or Contractor's failure to comply with the terms of this Exhibit H. Contractor shall pay any and all costs, losses, damages, awards of settlement, and expenses (including claims, internal administrative costs, third-party fees, attorneys' fees and expenses, and consultant's fees and expenses), related to or arising from Contractor's failure to comply with the terms of this Exhibit H.

1.2. Retention of Personally Identifiable Information. Contractor will not retain any Personally Identifiable Information for any period longer than necessary for Contractor to fulfill its obligations under the Purchase Order. As soon as Contractor no longer needs to retain such Personally Identifiable Information in order to perform its duties under the Purchase Order, Contractor will comply with Section 3 (Return of Personally Identifiable Information) with respect to the return or destruction of Personally Identifiable Information.

**2. Contractor's Warranties**

2.1 No Offshore Work. Contractor represents, warrants, and covenants that all Services shall be performed and rendered within the United States. In particular, Contractor represents, warrants, and covenants that it will not transmit or make available any Personally Identifiable Information to any entity or individual outside of the United States without the prior written consent of Buyer. If Buyer consents to Services being performed outside of the United States, in addition to the security requirements set forth in Section 4 (Security), Contractor agrees to also comply with all of the security requirements set forth in Buyer's Business Partner Security Requirements and Guidelines.

2.2 Compliance with Privacy Policy, Laws, and Regulations. Contractor acknowledges and agrees that (a) Personally Identifiable Information is subject to Buyer's then-current privacy policies as each may be amended at any time and from time-to-time, (b) Personally Identifiable Information is subject to all of the terms of the Purchase Order including the confidentiality and non-disclosure requirements in the Terms and Conditions and the security requirements set forth in Section 0 (Security) of this Exhibit H, and (c) by virtue of its possession, use, or contact with Personally Identifiable Information, Contractor may be subject to federal, state, and local privacy, confidentiality, consumer protection, advertising, electronic mail, and data security laws and regulations, whether in effect now or in the future and as they may be amended from time-to-time, including the Gramm-Leach-Bliley Act of

1999 (Public Law 106-102, 113 Stat. 1138) and its implementing regulations and the Fair and Accurate Credit Act of 2003 (collectively, “Privacy/Consumer Laws”). Accordingly, Contractor represents, warrants, and covenants that at all times during and after the Term it shall acquire, use, handle, collect, maintain, store, transmit, and safeguard Personally Identifiable Information in accordance with this Exhibit H, the Terms and Conditions, and each of the Privacy/Consumer Laws. Contractor acknowledges and agrees that it alone is responsible for understanding and complying with its obligations under this Exhibit H, the Terms and Conditions, and the Privacy/Consumer Laws.

2.3. Accuracy of Due Diligence Questionnaire Responses. If Contractor completed and signed a Contractor Due Diligence Questionnaire (the “Questionnaire”), substantially in the form attached to this Exhibit H, prior to Buyer issuing any Purchase Order, Contractor acknowledges that Buyer will rely on the information provided by Contractor in the Questionnaire as a material factor in Buyer’s decision to enter into the Purchase Order with Contractor. Contractor represents, warrants, and covenants that all of the responses to the questions in the Questionnaire, and any other information that Contractor provided in the Questionnaire, are true, accurate, and correct, and will remain true, accurate, and correct during the Term of the Purchase Order. If any Contractor response to the questions in the Questionnaire, or any other information that Contractor provided in the Questionnaire, is no longer true, accurate, and correct, Contractor will, within sixty (60) calendar days after learning of such change in circumstance, notify Buyer in writing of the specific response at issue, the details relating to the change in circumstance, and revised response to the question in the Questionnaire or, as applicable, revised additional information provided in the Questionnaire.

2.4. Employees and Subcontractors. Contractor will not permit an individual employee, agent, contractor, or subcontractor who has been convicted of a crime of dishonesty, breach of trust, or money laundering to have access to any Personally Identifiable Information.

### **3. Return of Personally Identifiable Information.**

On Buyer’s written request or upon expiration or termination of the Purchase Order for any reason, the Contractor will promptly, and no later than thirty (30) days after such request, expiration or termination (a) return or destroy, at Buyer’s option, all originals and copies of all documents and materials it has received containing Personally Identifiable Information, (b) deliver or destroy, at Buyer’s option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adaptations, and other documents or materials, whether in writing or in machine-readable form, prepared by Contractor, prepared under its direction, or at its request, from the documents and materials referred to in clause (a), and (c) provide a notarized written statement to Buyer certifying that all documents and materials referred to in clauses (a) and (b) have been delivered to Buyer or destroyed, as requested by Buyer. Contractor’s destruction or erasure of Personally Identifiable Information pursuant to this Section will be in compliance with best industry practices (e.g., Department of Defense 5220-22-M Standard).

### **4. Security**

4.1. In General. Contractor will maintain and enforce physical and logical security procedures with respect to its access and maintenance of Personally Identifiable Information that (a) are at least equal to industry standards for such types of locations, (b) are in accordance with Buyer’s then-current security requirements, and (c) provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration, or unauthorized disclosure, access, or acquisition of Personally Identifiable Information accessible by Contractor under the Purchase Order. Contractor will secure and defend its location and equipment against “hackers” and others who may seek, without

authorization, to modify or access Contractor systems or the information found therein. Contractor will periodically test its systems for potential areas where security could be breached.

4.2 Security Breach Notification. Contractor will immediately notify Buyer after becoming aware of any unauthorized access to, acquisition, disclosure, loss, use of, or any other potential corruption, compromise, or destruction of any Personally Identifiable Information. Contractor will, at its sole cost and expense, assist and cooperate with Buyer with respect to any investigation, disclosures to affected parties, and other remedial measures as requested by Buyer or required under any applicable Privacy/Consumer Laws. Contractor will promptly reimburse Buyer for its costs and expenses, including any claims, internal administrative costs, third-party fees and expenses (including attorneys and consultants), and any other costs, damages, and losses incurred by Buyer as a result of such access, disclosure, loss, use corruption, compromise, or destruction of Personally Identifiable Information. In the event of any breach of security or unauthorized disclosure of Personally Identifiable Information by Contractor that requires notification to any person or entity, including any customer, shareholder, or current or former employee of Buyer Parties under any Privacy/Consumer Laws, such notification will be provided by Buyer, unless otherwise approved by Buyer in writing. Buyer will have sole control over the timing and method of providing such notification. Contractor will use best efforts to promptly remedy any breach of security or unauthorized access or acquisition of Personally Identifiable Information and deliver to Buyer within sixty (60) days of such breach or unauthorized access or acquisition a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access or acquisition affecting Personally Identifiable Information.

4.3. Storage of Personally Identifiable Information. All Personally Identifiable Information must be stored in a physically and logically secure environment that protects it from unauthorized access, acquisition, modification, theft, misuse, and destruction.

4.4. Unauthorized Access. In the course of furnishing the Services or performance of the Work under the Purchase Order, Contractor will not access, and will not permit its personnel or entities within its control to access, Buyer's systems without Buyer's prior express written authorization. Such written authorization may subsequently be revoked by Buyer at any time in its sole discretion. Further, any approved access will be consistent with, and in no case exceed the scope of, any such approval granted by Buyer. All Buyer authorized connectivity or attempted connectivity to Buyer's systems will be through Buyer's security gateways or firewalls, and in conformity with Buyer's then-current security policies.

4.5. Contractor Systems. Contractor will be solely responsible for all systems and networks Contractor uses to access Buyer systems. Contractor will ensure Contractor personnel do not use any virtual private network or other device to simultaneously connect machines on any Buyer system or network to any machines on any Contractor or third-party systems, without (a) using only a remote access method approved in writing and in advance by Buyer, (b) providing Buyer with the full name of each individual who uses any such remote access method and the phone number and email address at which the individual may be reached while using the remote access method, and (c) ensuring that any computer used by Contractor personnel to remotely access any Buyer system or network will not simultaneously access the Internet or any other third-party system or network while logged on to Buyer systems or networks.

4.6. Security Policy. Contractor will establish, maintain and enforce a formal, documented, mandated, company-wide information security and management program that will include security policies, standards, and procedures (collectively, the "Contractor's Information Security Policy"). The Contractor's Information Security Policy will be communicated to all Contractor personnel, agents, contractors, and subcontractors in a relevant, accessible, and understandable form and will be regularly

reviewed and evaluated to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks.

4.7. Personnel and Contractor Protections. Contractor will screen and conduct background checks on all personnel who may potentially come in contact with Personally Identifiable Information for potential security risks and require all employees, agents, contractors, and subcontractors to sign an appropriate written confidentiality and non-disclosure agreement that contains terms at least as protective of the Personally Identifiable Information as the terms contained in this Exhibit H . All agreements with third parties involving access to Contractor's systems that store, transmit, process or otherwise handle Personally Identifiable Information, including all outsourcing arrangements and maintenance and support agreements (including facilities maintenance), will specifically contain provisions that bind Contractor's third parties to adhere to industry standard security protocols, controls, and procedures to protect Personally Identifiable Information. Contractor will supply each of its personnel, agents, contractors, and subcontractors with appropriate, ongoing training regarding information management and security procedures, risks, and threats. Contractor will establish, maintain and enforce a set of procedures consistent with industry standards to ensure personnel, agents, contractors, and subcontractors promptly report actual and suspected breaches of security.

4.8. Removable Media. Except in the context of Contractor's routine back-ups or as otherwise specifically authorized by Buyer in writing, Contractor will institute strict physical and logical security controls to prevent transfer of Personally Identifiable Information to any form of Removable Media. For purposes of this Agreement, "Removable Media" means portable or removable hard disks, floppy disks, USB memory drives, zip disks, optical disks, CDs, DVDs, digital film, memory cards (e.g., Secure Digital (SD), Memory Sticks (MS), CompactFlash (CF), SmartMedia (SM), MultiMediaCard (MMC), and xD-Picture Card (xD)), magnetic tape, and all other removable data storage media.

4.9. Data Control; Media Disposal, and Servicing. Personally Identifiable Information (a) may only be made available and accessible to those parties explicitly authorized under the Purchase Order or otherwise expressly by Buyer in writing, (b) if transmitted over the Internet or over other public or shared networks, must be protected using appropriate cryptography as designated or approved by Buyer in writing, and (c) if transferred using Removable Media must be sent via a bonded courier or protected using cryptography designated or approved by Buyer in writing. The foregoing requirements will also apply to back-up data stored by Contractor at off-site facilities. If any hardware, storage media, or Removable Media must be disposed of or sent off-site for servicing, Contractor will ensure all Personally Identifiable Information has been removed from such hardware and media using industry best practices (e.g., Department of Defense 5220-22-M Standard).

4.10. Hardware Return. Upon termination or expiration of the Purchase Order for any reason, or at any time upon Buyer's request, Contractor will return to Buyer all hardware and Removable Media provided by Buyer containing Personally Identifiable Information. The Personally Identifiable Information in such returned hardware and Removable Media will not be removed or altered in any way. The hardware should be physically sealed and returned via a bonded courier or as otherwise directed by Buyer. If the hardware containing Personally Identifiable Information is owned by Contractor or a third-party, a notarized statement detailing the destruction method used and the data sets involved, the date of destruction, and the company or individual who performed the destruction will be sent to a designated Buyer IT security representative within fifteen (15) calendar days after termination or expiration of the Purchase Order for any reason, or at any time upon Buyer's request. Contractor's destruction or erasure of Personally Identifiable Information pursuant to this Section will be in compliance with best industry practices (e.g., Department of Defense 5220-22-M Standard).

4.11. Physical and Environmental Security. Contractor facilities that process or store Personally Identifiable Information will be housed in secure areas and protected by perimeter security such as barrier access controls (e.g., the use of guards and entry badges) that provide a physically secure environment from unauthorized access, damage, and interference. Contractor will maintain an adequate level of physical security controls over its facilities, including appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches.

4.12. Access Control. Contractor will implement, maintain and enforce formal, written procedures to control access to its systems, services, and data that store, transmit, process or otherwise handle Personally Identifiable Information, including user account management procedures and the following controls:

4.12.1. network access to both internal and external networked services will be controlled through the use of properly configured firewalls and other commercially reasonable methods;

4.12.2. operating systems will be used to enforce access controls to computer resources including user sign-on identification and authentication, data access controls (e.g., password protection of Contractor's applications, data files, and libraries), accountability tracking, anti-virus software, intrusion detection software, event logging secured printers, hardcopy controls, restricted download to disk, and other removable media capability and provision for system backup;

4.12.3. applications will include access controls to limit user access to information and application system functions on a need-to-know basis to complete work under the Purchase Order; and

4.12.4. all systems will be monitored to detect deviation from access control policies and identify suspicious activity, and Contractor will record, review, and act upon all events in accordance with the incident response policies set forth below.

4.13. Communications and Operational Management. To the extent used to store, transmit, process or otherwise handle Personally Identifiable Information, Contractor will (a) deploy industry standard anti-virus software and all appropriate back-up protocols to ensure essential business information can be promptly recovered in the event of a disaster or media failure, (b) ensure its operating procedures are appropriately documented and designed to protect information, computer media, and data from theft, misuse, and unauthorized access, and (c) utilize industry standard encryption to protect Personally Identifiable Information while it is at rest, in transit, or residing on backup tapes.

4.14. Incident Notification. Contractor will promptly, but in no event more than twenty-four (24) hours after the occurrence, notify the designated Buyer IT security contact by telephone and email, and subsequently via written letter, of any potential or actual security attacks or incidents. The notice will include the date and time of the occurrence (or the approximate date and time of the occurrence if the actual date and time of the occurrence is not precisely known) and a detailed summary of the facts and circumstances of the security attack or incident, including a description of why the security attack or incident occurred (e.g., a precise description of the reason for the system failure) and the measures being taken to address and remedy the occurrence to prevent the same or a similar event from occurring in the future. A security incident includes instances in which internal personnel, agents, contractors, or subcontractors access systems or networks that contain Personally Identifiable Information in excess of their user rights, or use the systems or networks to inappropriately acquire or use Personally Identifiable Information.

4.15. Right to Audit. Buyer or its third party designee may, but is not obligated to, perform audits and security tests of Contractor's IT or systems environment to determine Contractor's compliance with this Exhibit H. These audits and tests may include coordinated penetration and vulnerability tests, interviews of relevant personnel, review of documentation, and technical inspection of systems and networks as they relate to the receipt, maintenance, use, retention, and authorized destruction of Personally Identifiable Information. If Buyer desires to conduct an unannounced penetration test, Buyer will provide contemporaneous notice to Contractor's Vice President of Audit, or equivalent position. Contractor will provide all information reasonably requested by Buyer in connection with any such audits and will provide reasonable access and assistance to Buyer upon request. Contractor will comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes and at its own cost and expense. Buyer reserves the right to view, upon request, any original security reports that Contractor has undertaken or commissioned to assess Contractor's own network security. If requested, copies of these reports will be sent via bonded courier to the Buyer security contact. Contractor will notify Buyer of any such security reports or similar assessments once they have been completed. Any regulators of Buyer or its affiliates will have the same rights of audit as described herein upon request.

4.16. On-Going Independent Monitoring of Security Controls. Contractor commits to execute on-going, independent monitoring of its control environment at its own cost and expense through Service Organization Control (SOC) 1 evaluations conducted in accordance with the Statement on Standards for Attestation Engagements (SSAE) No. 16, or SOC 2 audits (a/k/a SSAE Type 2) of the Trust Services Principles (TSPs). Contractor will provide copies of its SOC 1 or SOC 2 reports to Buyer [annually] [bi-annually] with respect to its primary operations. Contractor will ensure any data center, software as a service (SaaS) or cloud-computing subcontractors complete and forward SOC reports to Buyer on an [annual] [bi-annual] basis as well. Contractor will report to Buyer its plans to cure any control deficiencies identified through on-going, independent monitoring examinations.

## **5. Termination for Regulatory Non-Compliance.**

If Contractor's relationship with Buyer pursuant to any Purchase Order is identified in writing by any regulatory agency with jurisdiction over Buyer Parties, to present a risk to any customers, current or former employees, agents, contractors, or subcontractors of Buyer Parties, that requires correction, Buyer will notify Contractor of such assessment and the need for Contractor to cure, at its sole expense, the risks identified. Notwithstanding anything to the contrary contained in the Purchase Order or other Contract Documents, if Contractor fails to cure, or is incapable of curing, the identified risks within thirty (30) calendar days after receiving such notice from Buyer, Buyer will be entitled to immediately terminate the Purchase Order for its convenience and without the obligation to pay any termination fees or other costs to Contractor.

## **6. Regulatory Examinations.**

Contractor agrees that any regulator or other governmental entity with jurisdiction over Buyer Parties may examine Contractor's activities relating to the performance of the Purchase Order and this Exhibit H, to the extent such authority is granted to such entities under the law. Contractor will promptly cooperate with and provide all information reasonably requested by the regulator or other governmental entity in connection with any such examination and provide reasonable assistance and access to all equipment, records, networks, and systems reasonably requested by the regulator or other governmental entity. Contractor agrees to comply with all reasonable recommendations that result from such regulatory examinations within reasonable timeframes at Contractor's sole cost and expense. The foregoing cooperation and assistance will be rendered at Contractor's then-current time and materials rates, subject to Buyer's prior written authorization.

**7. Insurance**

Contractor will obtain, pay for, and maintain in full force and effect during the Term additional insurance as follows: Cyber/Network Security Insurance with a limit of not less than ten million dollars (\$10,000,000) per occurrence.

### Contractor Due Diligence Questionnaire

This Contractor Due Diligence Questionnaire (“**Questionnaire**”) assists **Exelon Corporation** and its subsidiaries (collectively, **Exelon**) in assessing your organization’s ability to perform the proposed/contracted services, security program, and ability to protect Personally Identifiable Information (as defined below). The responses also assist **Exelon** in fulfilling its legal obligations as a regulated entity, including establishing its due diligence in entrusting Personally Identifiable Information to others. The Questionnaire and your responses will be incorporated by reference into any agreement entered into between your company and **Exelon**. The answers are recorded and held in confidence by **Exelon** and, in addition to the certification provided below, you will be required to warrant the completeness and accuracy of your answers in any agreement entered into between your company and **Exelon**. **Exelon** views full and accurate completion of this Questionnaire as a critical part of its Contractor selection process.

#### How to Complete This Questionnaire

1. Please begin by providing the contact information requested below.
2. Please complete all numbered questions by checking the most accurate answer, providing a complete answer to any question(s) or requests for information, or, as appropriate, both. If one part of a question addressing multiple requirements causes you to be unable to answer “Yes,” provide such explanatory information as appropriate on a separate attached sheet, clearly indicating the question number and part of the question to which it relates.
3. If you are unclear about any questions, please contact the Exelon Contact listed below.
4. If there are any questions for which you would like to provide supporting material or additional information, please do so on a separate attached sheet, clearly indicating the question number to which it relates.
5. Once completed, be sure to print and sign your name with the appropriate date in the Certification section and mail to the Exelon Contact below.
6. Please also return this form and any attachments via e-mail to the Exelon Contact identified at the bottom of this Questionnaire.

#### Non-Public Personal Information (Personally Identifiable Information)

You will notice throughout this Questionnaire we refer to Personally Identifiable Information. The confidentiality, security, and integrity of Personally Identifiable Information is of foremost importance to Exelon. We expect all of our Contractors and business partners to have implemented appropriate security measures and procedures to ensure protection of Personally Identifiable Information. For purposes of this Questionnaire, the following definition of Personally Identifiable Information should be used:

**"Personally Identifiable Information"** means any name, number, or other information that may be used, alone or in conjunction with any other information, to identify, distinguish, trace or assume the identity of a specific person, including any (1) names, initials, mother’s maiden name, address, email address, passwords, account numbers, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number; (2) personal financial or healthcare information, credit card

information, bank account number, credit card number or debit card number; (3) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; (4) unique electronic identification number, address, or routing code; (5) telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)); or (6) personal preferences, demographic data, marketing data, or any other identification data. For the avoidance of doubt, Personally Identifiable Information includes all “nonpublic personal information,” as defined under the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d), and “Personal Data” as that term is defined in EU Data Protection Directive (Directive 95/46/EEC) on the protection of individuals with regard to processing of personal data and the free movement of such data.

**Contractor Contact Information:**

<b>Contractor’s Complete Legal Name</b>			
Contact		Phone	
Address		Email	
City/St/Zip		2 <sup>nd</sup> Phone	

**Due Diligence Questions:**

	<b>CONTRACTOR RESPONSIBILITY (VR):</b>	<b>RESPONSES:</b>
VR1.	Is there any pending or threatened litigation that pertains to your data privacy, information security, or security policy and compliance program? If yes, provide a detailed description of each circumstance.	
VR2.	Is there any pending or threatened regulatory enforcement action or investigation that pertains to your data privacy, information, security, or security policy and compliance program? If yes, provide a detailed description of each circumstance.	
VR3.	Has your company ever experienced a breach of security that required notification to a consumer under the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1138), California Security Breach Information Act (California Civil Code Sections 1798.29, 1798.82 and 1798.84), or any other privacy or consumer protection laws or regulations of any jurisdiction? If so, provide the dates of all such notifications and a summary of the circumstances.	

VR4.	Have any internal or external audits or examinations resulted in Needs Improvement or Unsatisfactory findings relating to security, privacy, or disaster recovery/business continuity that have not yet been addressed?	<input type="checkbox"/> No <input type="checkbox"/> If Yes please provide a summary and your plan for addressing these issues.
VR5.	Does your company have TLS Gateway Encryption in place?	<input type="checkbox"/> No <input type="checkbox"/> Yes
VR6.	Do you intend to use any affiliates or subsidiaries in connection with your performance of the proposed relationship with Exelon? If so, identify each such entity and the services and/or products they will provide.	
VR7.	Are any of the affiliates or subsidiaries referred to in the preceding question located outside the United States? If so, identify all relevant countries.	
	<b>USE OF CONTRACTORS AND SUBCONTRACTORS (US):</b>	<b>RESPONSES:</b>
US1.	Do you intend to use any contractors or subcontractors in connection with your performance of the proposed relationship with Exelon? If so, identify each such entity and the services and/or products they will provide. For the avoidance of doubt, <u>all</u> hosting providers, collocation facilities, server farms, and similar providers must be identified.	<input type="checkbox"/> No <input type="checkbox"/> Yes
US2.	<p>Have your outside providers undergone a recent vulnerability assessment or Service Organization Control (SOC) evaluation performed by a recognized third party?</p> <p>If yes, are they willing to share the results with us?</p> <p>If no, would they be willing to undergo a vulnerability assessment or Service Organization Control (SOC) evaluation?</p>	
US3.	Are any of the contractors or subcontractors referred to in the preceding question located outside the United States? If so, identify all relevant countries.	
	<b>INFORMATION SECURITY POLICY (IS):*</b>	<b>RESPONSES:</b>
	*References to Exelon “data” in this Questionnaire are intended to include, where appropriate, Personally Identifiable Information.	

IS1.	You will:	Check all that apply: <input type="checkbox"/> Process Exelon data <input type="checkbox"/> Store Exelon data <input type="checkbox"/> Operate Exelon applications <input type="checkbox"/> Install or service Exelon applications or systems <input type="checkbox"/> Have access to Exelon customer and/or employee Personally Identifiable Information <input type="checkbox"/> Have physical access to secured Exelon computer facilities <input type="checkbox"/> Have network access to Exelon networks <input type="checkbox"/> Transmit files to or from Exelon <input type="checkbox"/> Have Exelon client contact
IS2.	Are you ISO-27001 or ISO 27002 Certified?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes (If checked please provide details, including date of audit, status of planned updates to the audit, and any material changes to your security environment after completion of the audit)
IS3.	Do you follow the guidelines set out in ISO-27001 or ISO 27002 and the principles defined by them?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes, this exists or occurs today
IS4.	Have you been audited / assessed against ISO-27001 or 27002 (within the last 18 months)?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes (If so, please provide full original reports)
IS5.	Does your organization have a formal, documented, mandated, company-wide information security program, including security policies, standards and procedures (collectively “Information Security Policies”), that is in effect, monitored, and enforced?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development,(if checked, please provided details planned <input type="checkbox"/> Yes, this exists or occurs today, (If checked please provide a copy of the Security Policies, subject to Exelon’s confidentiality obligations).
IS6.	Do your Information Security Policies specifically address the confidentiality, integrity, and availability of your facilities, systems, and the information in your possession and control?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
IS7.	Do you have a formalized training program for your employees with regard to your Information Security Policies? How often	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet

	is training conducted?	<input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
IS8.	Has your organization taken steps to create and maintain security awareness for data processing employees and users of systems and networks? What steps are used to ensure ongoing security awareness?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
IS9.	Please state the last date on which your Information Security Policies were updated and how frequently do you review the Information Security Policies?	
IS10.	Do you conduct penetration or other testing of your networks, systems, and applications?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
IS11.	Have you undergone a penetration or vulnerability assessment or Service Organization Control (SOC) evaluation of your environment performed by a professionally or nationally recognized third party? If so, can you provide a copy?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, please provide a copy of the results of such test).
IS12.	Has your organization systems implemented any Intrusion Detection or Intrusion Prevention Systems (IDS/IPS)? If so, which type? How long have they been in place? How many false positives are these systems now reporting each month?	
<b>ORGANIZATIONAL SECURITY (OS):</b>		<b>RESPONSES:</b>
OS1.	Do you require off-site data to be encrypted, or do you have a policy prohibiting removal of data from secured premises? Please explain. Describe your organization's encryption key handling infrastructure?	
OS2.	Do you use mobile computing devices, remote access and/or wireless technology? If so, please describe how these technologies/devices are secured.	
OS3.	Does your organization have a dedicated Information Security team that is responsible for implementing, enforcing and monitoring the Information Security management function?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
OS4.	Do you have a documented and established computer incident response program?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development

		<input type="checkbox"/> Yes, this exists or occurs today (If checked, please provide a copy of the program and a detailed description, including whether the program includes notification/escalation procedures to notify customers in the event of an intrusion)
OS5.	Do you have a Computer Emergency Response Team established to address hacking and other system attacks?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
OS6.	Do you receive security vulnerability advisories from vendors or from organizations such as CERT® (CERT® is a registered trademark of Carnegie Mellon University)? If yes, which advisories do you receive and what actions are taken on these advisories?	
OS7.	Do you impose all of your own security requirements on all downstream vendors, contractors, and subcontractors with access to data? Please explain.	
OS8.	Do you include specific protections in all agreements with all 3 <sup>rd</sup> parties, including outsourcing contractors, to address security, confidentiality, and access control?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
	<b>ASSET CLASSIFICATION AND DATA CONTROL (AC):</b>	<b>RESPONSES:</b>
AC1.	All information assets, including those of your customers, are accounted for and assigned a responsible owner for ensuring adequate controls are implemented to protect the confidentiality, integrity, and availability of those assets.	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today
AC2.	Do your information security policies establish a formal procedure for provisioning user access to computing resources that would be used to process, transmit, or store Exelon data? What level of management grants/approves employee access to information systems? How frequently are access rights reviewed? Do those procedures include requirements for adding users, adding or modifying access rights, and removal of access rights	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos.)/In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, please describe your access control procedures and practices)

	based on defined criteria?	
AC3.	Do you have a policy establishing that sessions initiated from outside public or third-party shared networks are permitted only for authorized users and application services? What controls are implemented to enforce these requirements?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, please describe your network access control procedures and practices)
AC4.	Has your organization implemented automated activity monitoring and recording capabilities?	
	<b>PHYSICAL AND ENVIRONMENTAL SECURITY (PE):</b>	<b>RESPONSES:</b>
PE1.	Has your organization adopted formal policies and practices to control the use of data on removable media and mobile computers that are in effect, monitored, and enforced? Examples of removable media include CDs, DVDs, ZIP drives, USB fobs, memory cards (e.g., Secure Digital (SD), Memory Sticks (MS), CompactFlash (CF), SmartMedia (SM), MultiMediaCard (MMC), and xD-Picture Card (xD). Examples of mobile computers include laptops, PDAs, and any other system that can be attached and detached easily from the network.	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today (provide a copy of such a policy or describe your practices to establish these controls).
PE2.	Do you protect work area(s) where Exelon intellectual property (IP), Personally Identifiable Information, and Confidential Information are contained by badge access control providing a physically secure environment including the monitoring and logging of access to that environment?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, provide a copy of your current physical and environmental security procedures).
PE3.	Do you protect work area(s) where Exelon IP, Personally Identifiable Information, and Confidential Information are contained by security guards who are physically present at points of ingress and egress?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, provide a copy of your current physical and environmental security procedures).
PE4.	Do you protect work area(s) where Exelon IP, Personally Identifiable Information, and Confidential Information are contained by locks, alarms, and cameras which information can be monitored, recorded, and/or logged?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, provide a copy of your current physical and environmental security procedures).
PE5.	Do you use “Badge-in” and “Badge-out”	<input type="checkbox"/> Not applicable to my environment/situation

	procedures to control access to critical areas such as server rooms, IDF closets, data centers, etc. where Exelon data is contained?	<input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today (if checked, provide a copy of your current physical and environmental security procedures).
PE6.	Does your organization have specific procedures to ensure data, documents or records containing sensitive information are not discarded in whole, readable form and that they are shredded, burned or otherwise mutilated and for cleansing and/or destroying computer media, including removable media, to ensure confidential information is adequately protected? In particular, has your company adopted procedures to ensure all computer media, including removable media, are wiped of all data (e.g., in accordance with the DoD 5220-22-M Standard) before being sent out for service, redeployed for use in other engagements or for the use of other customers, decommissioned, sold, etc.?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today
	<b>COMMUNICATIONS AND OPERATIONAL MANAGEMENT (CO):</b>	<b>RESPONSES:</b>
CO1.	Do you monitor all information processing facilities for security events which are reviewed and acted upon as defined in a formal, written incident response plan?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today, provide a copy of your incident response plan.
CO2.	Have you deployed anti-virus software is on all computers and update signature files frequently? Are incoming files scanned automatically? Are removable media scanned automatically when they are mounted on your systems? Are virus-infected files "repaired" automatically, or quarantined, or is a human operator required to make a decision? Are data storage areas regularly scanned for viruses that were not widely recognized when the data was originally collected and stored? How often does this scanning take place?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today
CO3.	Do you use back-up facilities to ensure essential business information can be recovered in the event of disaster or media failure? Are back-up copies of all critical and operational data stored offsite?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos./)In development <input type="checkbox"/> Yes, this exists or occurs today(if checked please

		provide details of your back-up procedures, including how often back-ups are performed for various categories of information, are back-ups retained in geographically disparate and secure locations, what is the method used to perform back-ups, and do you use RAID)
	<b>SYSTEMS ACCESS CONTROL (SA):</b>	<b>RESPONSES:</b>
SA1.	Do you require all data exchanges with 3 <sup>rd</sup> parties to be subject to agreements that address the confidentiality, integrity, and availability of your systems and the information, including Exelon’s data, in your possession and control?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this is needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes, this exists or occurs today, provide a description of your contracting procedures.
SA2.	Are the devices (servers, routers and firewalls) your organization will be using to provide services to Exelon dedicated to Exelon or are they also used for you other customers as well? If the devices are hosting data from other clients, what have you done to ensure that other clients cannot access Exelon data? What logical controls are in place?	
SA3.	Network access to both internal and external networks is controlled and monitored.	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes, this exists or occurs today (if checked please provide a detailed description of your access control procedures).
SA4.	Has your organization implemented internal system barriers (logical barriers) to information access that prevent personnel or vendors from accessing information that is not relevant to their job functions? What systems are in place for this purpose?	
	<b>SYSTEMS DEVELOPMENT AND MAINTENANCE (SD):</b>	<b>RESPONSES:</b>
SD1.	Do you consider security at application and system design time and implement security through controls integrated into the development lifecycle?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes, this exists or occurs today(if checked please provide a detailed description of the procedures used in your application and systems development process to consider security risks and controls to mitigated those risks).
SD2.	Do you formally test systems for security before certification for production?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet

		<input type="checkbox"/> Planned (within 3 mos) /In development <input type="checkbox"/> Yes (If checked please provide a detailed description of the procedures used to test the security of your applications and a copy of any pre-production certification procedures).
SD3.	Do you have separate physical/logical environments for development, testing, production and destruction?	<input type="checkbox"/> Not applicable to my environment/situation <input type="checkbox"/> Conscious decision not to deploy this practice <input type="checkbox"/> Aware this needed but no actions taken yet <input type="checkbox"/> Planned (within 3 mos)/In development <input type="checkbox"/> Yes (If checked please provide a detailed description of the testing environments used).
	<b>PRIVACY POLICY (PP):</b>	<b>RESPONSES:</b>
PP1.	Does your company have a privacy policy? Is it published and available for our review? Do your personnel have copies?	
PP2.	Will you permit Exelon to independently verify your privacy procedures? Please explain.	
PP3.	Do you have a process for reporting and managing Personally Identifiable Information breaches? What is the number and the outcome of the Personally Identifiable Information breaches reported in the past 12 months?  Please provide a statement describing your process.	
PP4.	Are your employees and contractors trained to report Personally Identifiable Information breaches?  Please explain.	
PP5.	Is it your policy to immediately report Personally Identifiable Information breaches to your clients, such as Exelon?  Please explain.	
PP6.	Have you had to provide notice about a Personally Identifiable Information breach in the last 24 months? If yes, provide a detailed description of each circumstance.	
PP7.	Are post-breach incidents reviewed to determine if there are system or procedure weaknesses that require remediation?	
PP8.	Do you require your own (downstream) vendors, contractors, and subcontractors to report Personally Identifiable Information	



## EXHIBIT I – CONTRACTOR TRAVEL COST SPECIAL TERMS AND CONDITIONS

For any Purchase Order in which the Contract Price includes reimbursement of Contractor Personnel travel expenses, the provisions set forth in this Exhibit I will apply, except as expressly modified in the Purchase Order with references to this Exhibit I.

### ARTICLE 1 DEFINITIONS

“**Buyer’s Preferred Provider**” means Professional Travel, Inc., or other travel services vendor that Exelon may identify in a Purchase Order.

“**CTA**” means the Chicago Transit Authority.

“**IRS**” means the U.S. Internal Revenue Services or its successor.

“**M&IE**” means meals and incidental expenses.

“**SEPTA**” means the Southeast Pennsylvania Transit Authority.

“**Travel Expense Plan**” means template as referenced in Attachment (1)

### ARTICLE 2 TRAVEL REQUIREMENTS

**2.1. Travel Plan.** Contractor will submit a Travel Expense Plan complying with the requirements of this Exhibit to Buyer’s Designated Representative in conjunction with the Project Schedule or at such other time as specified in the Purchase Order, and upon written approval by Buyer, will be incorporated into the Purchase Order as a Contract Document.

**2.2. Use of Buyer’s Preferred Provider.** Except as approved in advance by Buyer’s Designated Representative, Contractor will use Buyer’s Preferred Provider to book travel by following the instructions in Attachment (2).

#### **2.3. Maximum Reimbursement Amounts**

2.3.1. Buyer will only reimburse Contractor for transportation and temporary lodging expenses secured by Buyer’s Preferred Provider for business travel services.

2.3.2. If Contractor is authorized to use its own travel policy and makes its own reservations, any costs incurred in excess of those published by the U.S. General Service Administration (GSA) at the provided link ([www.gsa.gov/perdiem](http://www.gsa.gov/perdiem)) will not be reimbursed.

**2.4 Non-Reimbursable Travel Expenses.** No Contractor Personnel travel expenses will be reimbursed for:

2.4.1 Contractor Personnel who live or have their place of employment within fifty (50) miles of the Site where they are performing the Work.

2.4.2 Time spent in transit (unless performing Work-related tasks which will be invoiced as Work and not travel);

2.4.3. Personal telephone charges;

- 2.4.4 Dry cleaning, laundry or pressing costs;
- 2.4.5 Entertainment or travel to entertainment locations;
- 2.4.6 Personal expenses, such as haircuts, make-up, toiletries, newspapers, magazines, etc.

**2.5. Limitations on Travel Expense Reimbursements.**

2.5.1 Transportation Expenses.

2.5.1.1 Domestic Air and Rail Travel. Except as approved in advance by Buyer's Designated Representative, Buyer will only reimburse Contractor for domestic air or rail travel at the lowest priced, non-refundable fare at the time of ticketing (e.g., coach, economy) for a flight with the least number of stops or connections.

2.5.1.2 International Air Travel. A single flight of 8 hours or more may be upgraded to business class without prior approval.

2.5.1.3 Privately Owned Vehicles.

2.5.1.3.1 Travel to and from the Site, and between the Site and the place of temporary lodging or meals, in the Contractor Personnel's own vehicle will be reimbursed at the current IRS rate, subject to the 50 mile guideline.

2.5.1.3.2 Travel between different Sites will be reimbursed at the current IRS rate as required by Exelon.

2.5.1.4 Car Rentals:

2.5.1.4.1 Except as approved in advance by Buyer's Designated Representative, only the cost of rentals of intermediate size vehicles will be reimbursed

2.5.1.4.2 Except as approved in advance by Buyer's Designated Representative, Rentals will not be reimbursed for Contractor Personnel who are utilizing temporary lodging within Center City Philadelphia, Downtown Chicago, Baltimore, Houston and the business district within Washington DC or other locations within walking distance of the Site.

2.5.1.5 Taxicabs and Mass Transit.

2.5.1.5.1 Taxicab fare or mass transit between the transportation hub, the temporary lodging, and the Site will be reimbursed where a car rental has not been authorized.

2.5.1.5.2 Taxicabs, buses, or rail services (such as the CTA, SEPTA, etc.), when available, should be taken as the most cost-effective method over any limousine service

2.5.2 Temporary Lodging Expense.

2.5.2.1 Contractors will be reimbursed in accordance with Sections 2.3.1 and 2.3.2.

2.5.2.2 If available, Contractor will utilize short-term (extended stay) hotel/apartment rentals for Work with a duration of thirty (30) Calendar Days or longer.

2.5.2.3 Except as provided in Section 2.3.1, reimbursements for temporary lodging will not exceed the GSA standard per diem rates for the locality or county in which the Contractor Personnel are performing the Work.

2.5.3 M&IE Expense

2.5.3.1 Except as provided in Section 2.3.1, reimbursements for M&IE will not exceed the GSA standard per diem rates (published at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem)) for the locality or county in which the Contractor Personnel are performing the Work.

2.5.3.2 Except as approved in advance by Buyer's Designated Representative, Buyer will reimburse a maximum per diem of five (5) days per week.

**ARTICLE 3  
DOCUMENTATION**

3.1. **Receipts.** Original receipts or a copy of the Contractor's Itinerary for all travel, temporary lodging and M&IE must be submitted with the Contractor's invoice.

3.2. **Mark-ups.** Travel expenses will be reimbursed at cost with no additional administrative mark-up.

**Attachment (1)**  
**Travel Plan Template**

**Exelon Corporation - Contractor Travel Expense Plan**

This Travel Request May Be Used For Multiple Travelers With The Same Itineraries

Today's Date

Travel Arranger Name	E-mail Address	Phone #

TRAVELER NAME	Employee ID (6 digits)	If Contractor, enter the Exelon sponsor name & phone

AIR / AMTRAK				
	DEPART	ARRIVAL		
Date	Airport, City, State or Train Station	Airport, City & State or Train Station	Time of Departure	Preferred Airline, Flight Number and/or Other Flight Information

If booking **AMTRAK**, please provide the following regarding the credit card in profile--- Security Code:  Billing Zip Code:

HOTEL				
Hotel Name	City & State	Check-In Date	Check-Out Date	Additional Hotel Information (e.g. king bed, away from elevator, etc.)

RENTAL CAR				
Do you want a rental car based on the air flights? <input style="width: 50px;" type="text"/>				(Yes or No)
If <b>YES</b> , an <u>intermediate</u> from <u>National Car Rental</u> will be reserved, unless otherwise noted below.				
Rental Car Company	City & State	Pick-Up Date & Time	Drop-Off Date & Time	Additional Rental Car Information (e.g. car size, one-way)

<b>Other Reservation Requirements or Information: (limo or black car service, special requests or seating, etc.)</b> If requesting black car service, please detail location, date and time of pickup and destination.

## **Attachment (2)** **Buyer's Preferred Provider for Business Travel**

Exelon Corporations' Preferred Provider for business travel is **PROFESSIONAL TRAVEL**  
**Telephone 1-888-Exelon0 (1-888-393-5660), Monday – Friday 7AM – 8PM CT**

Reservation Instructions:

1. Call PROFESSIONAL TRAVEL.
2. Give the agent your name and Company name and identify yourself as an Exelon Consultant/Contractor
3. Give the destination city, dates and approximate departure and arrival times
4. Confirmation and your itinerary will be sent to the Traveler's e-mail address.

PROFESSIONAL TRAVEL has a complete list of Preferred Providers for Airline, Hotels, Car Rentals and Rail and will be able to assist the traveler(s) in arranging the most suitable accommodations.

Profiles: If you travel for Exelon more than 2 times a year, you may provide Professional Travel your basic information (Name, e-mail, phone number and sponsoring Exelon employee) and they will create a shell of a profile so that you may update with your travel preferences and loyalty number.

ACTION: Please send your name, e-mail address, contact phone number and sponsoring Exelon employee contact information to Kelley Kyle-Hoover at [kelleyh@protrav.com](mailto:kelleyh@protrav.com). We will confirm with your sponsoring Exelon employee and advise when you can log-in to Concur Travel and update your profile and book online.

Note: PROFESSIONAL TRAVEL is required by contract to offer the lowest possible airfare. The reason for not accepting an offered airfare will be entered into the computer record and will appear on the travel management exception reports compiled by PROFESSIONAL TRAVEL. Please allow PROFESSIONAL TRAVEL to investigate alternative options.

**EXHIBIT J – FEDERAL FUNDING SPECIAL TERMS AND CONDITIONS**

A. Applicable Law for purposes of these Terms and Conditions includes, without limitation, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act"), 10 CFR Part 600 and Appendix B to Subpart D thereto and Office of Management and Budget ("OMB") Guidance thereto, and such other laws and federal regulations as hereinafter described:

1. Government Access: Provisions permitting access of DOE, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, transcriptions, and copies of such documents.

2. Equal Employment Opportunity: Provision requiring compliance with E.O. 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

3. Government-wide Debarment and Suspension (Non-procurement) (10 CFR Part 606)

4. Government-wide Requirements for Drug-Free Workplace (Grants) (10 CFR Part 607)

5. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c): Provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

6. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333): Contracts for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

7. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.): Provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (41 U.S.C. 7401 et seq.) and the Federal Water Pollution control act as amended (33 U.S.C. 1251 et seq.).

8. Rights to Inventions and Data Made Under a Contract or Agreement: Contracts or agreements for the performance of experimental, development, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR 600.325 and Appendix A-Patent and Data Rights to Subpart D, Part 600.

9. The Recovery Act. The Recovery Act, and specifically therein, without limitation by reference hereby, and OMB Guidance thereto:

9.1. Sec. 1553: Protecting State and Local Government and Contractor Whistleblowers.

9.2. Sec. 1606: Wage Rate Requirements. See, 40 U.S.C. 31, as implemented at 2 CFR 176.190, 29 CFR parts 1, 3 and 5, and such contractual clauses as set forth in 29 CFR 5.5, which are incorporated herein by reference.

9.3. Sec. 1605: Use of American Iron, Steel, and Manufactured Goods.

9.4. Contractor also agrees to provide Exelon with assistance necessary for Exelon to comply with the reporting requirements in the Recovery Act.

10. Lobbying: Certification requirements under 10 CFR 601 ("New Restrictions on Lobbying").

B. Contractor will, in concert with its other obligations in the Terms and Conditions, comply the Laws above.

EXHIBIT K – STAFF AUGMENTATION SPECIAL TERMS AND CONDITIONS

The following provisions are applicable to Contractors providing Staff Augmentation Services at or for Buyer's Sites and are in addition to the obligations and representations made elsewhere in the Terms and Conditions.

**1. Patient Protection and Affordable Care Act Obligations**

1.1. This Exhibit and the obligations stated herein will be applicable to all Purchase Orders for Services in which the Terms and Conditions to which this Exhibit is attached are referenced or attached.

1.2. Contractor will comply, and will ensure that its Subcontractors comply, with all provisions of the federal Patient Protection and Affordable Care Act, Pub. Law 111-148, 124 Stat. 119-1025 (March 23, 2010) as amended, and its implementing regulations and any regulatory guidance ("ACA"), including but not limited to the employer shared responsibility provisions of the ACA with respect to all Contractor Personnel who are performing Services for the Buyer. To the extent subject to the applicable provisions of the ACA, Contractor and its Subcontractors will offer to all Contractor Personnel performing Services for Buyer who are "full-time employees" and to their "dependents" the opportunity to enroll in health insurance coverage that: (a) qualifies as "minimum essential coverage" under a health insurance plan sponsored by the Contractor; (b) is "affordable"; (c) provides "minimum value" (collectively "ACA-Compliance Coverage"). The foregoing terms will have the meanings as defined under Sections 36B, 4980H, and 5000A of the Internal Revenue Code ("Code"), its implementing regulations, and related regulatory guidance. Contractor will provide proof of Contractor's and Subcontractors' compliance with the requirements of this Exhibit upon written request of Buyer.

1.3. For the purposes of the ACA, the Contractor will be the "common law employer" (as defined in Treas. Reg. §31.3401(d)-1, applicable guidance and common law principles) of its personnel and that the Subcontractor will be the "common law employee" of the Subcontractor personnel, where those individuals provide Services to the Buyer, and that Contractor and Subcontractors will not take any contrary position before any Governmental Authority or in any other court or legal proceeding regarding the ACA obligations of the Buyer, the Contractor or the Subcontractors.

1.4. The Parties agree that the Contract Price for each Purchase Order will include a fee of per individual Contractor Personnel providing Staff Augmentation Services to Buyer ("ACA Additional Fee") who has accepted ACA-Compliant Coverage. Unless otherwise specified in the Purchase Order, the fee will be twenty cents (\$0.20) per hour or any part of such hour worked. The Parties acknowledge that the ACA Additional Fee reflects the Parties' intent to assign an additional fee to Buyer for the costs associated with Contractor or its Subcontractors providing ACA-Compliant Coverage to those Contractor Personnel who accept such coverage. In no event will Buyer's payment of the ACA Additional Fee for any Contractor Personnel enrolled in Contractor's or Subcontractor's health care coverage be construed as evidence of or an admission that the such Contractor Personnel are common law employees or joint employees of the Buyer.

1.5. In order to be paid the full Contract Price, inclusive of the ACA Additional Fee, Contractor must certify in writing to Buyer that the individual Contractor Personnel performing Staff

Augmentation Services have accepted the ACA-Compliant Coverage described above. Notwithstanding any other provision of the Contract Documents, Buyer will have the right to set off against Contractor's invoices any and all reasonable costs incurred by Buyer as a result of Contractor's or Subcontractor's failure to comply with the requirements of this Exhibit, including recovery of Buyer's ACA Additional Fee for any Contractor Personnel who do not enroll in Contractor's or a Subcontractor's ACA-Compliant Coverage.

1.6. In addition to and without limiting Contractor's obligations to indemnify and hold the Buyer Parties harmless under the Terms and Conditions, Contractor will be solely and exclusively responsible for, and will reimburse, indemnify, and hold harmless the Buyer Parties, for any and all payments, liabilities, penalties, or other liabilities (including interest, excise taxes, and/or attorneys' fees enforcement costs) that may be assessed or imposed under Section 4980H of the Code as a consequence of the Contractor's and/or Subcontractors' failure to offer ACA-Compliance Coverage. Additionally, in the event that any Contractor Personnel is deemed to be a "common law employee" of the Buyer, Contractor will be solely and exclusively responsible for, and will reimburse, indemnify, and hold harmless the Buyer and the Indemnities for any taxes, penalties, or other liabilities assessed against the Buyer due to Contractor's failure to provide offers of ACA-Compliant Coverage to Contractor Personnel. In the event that Buyer is notified by any entity (including but not limited to the Internal Revenue Service, the U.S. Department of Health and Human Services, or any insurance Exchange) of Buyer's potential liability for any such taxes, penalties (including those assessed under 4980H), or other liabilities relating to any Contractor Personnel, Contractor will fully cooperate, at Contractor's expense, with the Buyer's efforts to object to or appeal any determination of liability or potential liability.

1.7 The Parties further agree as follows:

1.7.1. Contractor will provide written certification of insurance on an annual basis to Buyer that it has ACA-Compliant Coverage. Certifications will be sent to:

Exelon Business Services Company, LLC  
Human Resources - Vice President Health & Benefits  
Attn: ACA Compliance Certifications  
Chase Building – 50<sup>th</sup> Floor  
10 South Dearborn Street  
Chicago, IL 60603

1.7.2. Contractor will promptly notify Buyer's Designated Representative in the event that an individual Contractor Personnel performing Staff Augmentation Services will terminate his or her ACA-Compliant Coverage.

1.8. The Buyer may audit Contractor's records to confirm Contractor and its Subcontractors have complied with the requirements of this Exhibit K.

## **2. Other Requirements**

2.1. Contractors and Subcontractors will report all income provided by Contractor or Subcontractor to Contractor Personnel performing Staff Augmentation Services for Buyer on an IRS Form W-2.