

---

---

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

January 31, 2022

Date of Report (Date of earliest event reported)

---

Commission File Number	Name of Registrant; State or Other Jurisdiction of Incorporation; Address of Principal Executive Offices; and Telephone Number	IRS Employer Identification Number
---------------------------	---	---------------------------------------

---

001-41137	CONSTELLATION ENERGY CORPORATION  (a Pennsylvania corporation) 1310 Point Street Baltimore, Maryland 21231 (610) 765-5959	87-1210716
-----------	--	------------

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
CONSTELLATION ENERGY CORPORATION Common Stock, without par value	CEG	The Nasdaq Stock Market LLC

Indicate by check mark whether any of the registrants are emerging growth companies as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if any of the registrants have elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

---

---

### **Item 1.01. Entry into a Material Definitive Agreement.**

On February 1, 2022 (the “Distribution Date”), Exelon Corporation (“Exelon”) completed the previously announced complete legal and structural separation and distribution to its shareholders of all of the outstanding shares of common stock, no par value, of Constellation Energy Corporation (“Constellation” and, together with its consolidated subsidiaries, “we,” “us,” “our,” or the “Company”) to Exelon’s shareholders (the “Distribution”). Each Exelon shareholder received one share of Constellation’s common stock for every three shares of Exelon common stock held by such shareholder at 5:00 p.m. Eastern Time on January 20, 2022, the record date.

On January 31, 2022, in connection with the Distribution, Constellation entered into several agreements with Exelon setting forth the principal actions taken or to be taken in connection with the Distribution and governing the relationship of the parties following the Distribution, including the following:

- a Separation Agreement;
- a Transition Services Agreement;
- a Tax Matters Agreement; and
- an Employee Matters Agreement.

Summaries of the material terms and conditions of those agreements can be found in the section entitled “Certain Relationships and Related Party Transactions” in Constellation’s information statement, dated January 24, 2022 (the “Information Statement”), which was included as Exhibit 99.1 to our Current Report on Form 8-K filed on January 28, 2022, and which summaries are incorporated herein by reference. The summaries of those agreements do not purport to be complete and are qualified in their entirety by reference to the full text of the Separation Agreement, Transition Services Agreement, Tax Matters Agreement and Employee Matters Agreement, which are attached as Exhibits 2.1, 10.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

### **Item 3.03. Material Modification to Rights of Security Holders.**

The information set forth under Item 5.03 below is incorporated into this Item 3.03 by reference.

### **Item 5.01. Changes in Control of Registrant.**

Immediately prior to the Distribution, we were a wholly owned subsidiary of Exelon. On the Distribution Date, Exelon distributed all of the outstanding shares of common stock, no par value, of Constellation held by Exelon in the Distribution. As a result of the Distribution, which was effective at 12:01 a.m. Eastern Time on the Distribution Date (the “Effective Time”), we became an independent, publicly traded company, and Exelon retained no ownership interest in the Company. The Distribution was made without the payment of any consideration or the exchange of any shares by Exelon’s shareholders. The information set forth under Item 1.01 above is incorporated into this Item 5.01 by reference.

### **Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

#### ***Board of Directors***

On January 31, 2022, Christopher Crane and Gayle Littleton, who served as interim members of our Board of Directors (the “Board”) prior to the Distribution resigned, and each of the persons set forth in the table below were appointed to serve as members of the Board in connection with the Distribution and to serve on the committees set opposite their names. Robert Lawless serves as Chair of the Board of Directors. Each director will hold office until the annual meeting of the shareholders of Constellation at which the term of such director’s class ends and until his or her successor shall have been duly elected and qualified or as otherwise provided by the Bylaws (as defined below).

---

<b>Name</b>	<b>Age</b>	<b>Committee Appointment</b>
Joseph Dominguez	59	N/A
Yves de Balmann	75	Compensation (Chair), Corporate Governance
Laurie Brlas	64	Audit and Risk (Chair)
Rhonda Ferguson	52	Audit and Risk, Nuclear Oversight
Bradley Halverson	62	Compensation, Corporate Governance
Charles Harrington	63	Corporate Governance, Nuclear Oversight
Julie Holzrichter	53	Audit and Risk, Compensation
Ashish Kandpur	54	Compensation, Corporate Governance
Robert Lawless	75	Corporate Governance (Chair)
John Richardson	61	Audit and Risk, Nuclear Oversight (Chair)

Except as shown below for each of Mmes. Ferguson and Holzrichter and Messrs. Halverson, Harrington and Kandpur, information regarding the background of our directors can be found in the section entitled “Management” in the Information Statement, which is incorporated herein by reference. On January 31, 2022, the Board adopted certain compensation plans regarding the Company’s directors, to be effective February 1, 2022, which are materially similar to the plans in place for directors of Exelon prior to the Distribution. Information regarding the compensation of our directors and the Company’s director compensation plans can be found in the section entitled “Executive and Director Compensation” in the Information Statement, which is incorporated herein by reference.

*Rhonda Ferguson* joined Allstate Corporation in 2020 and serves as its Executive Vice President, Chief Legal Officer, General Counsel and Secretary. Prior to joining Allstate, she served as Executive Vice President, Chief Legal Officer and Secretary for Union Pacific Corporation from 2016 to 2020, and as Vice President, Secretary and Chief Ethics Officer of First Energy Corp. from 2007 to 2016. Ms. Ferguson serves on the boards for the RAND Institute for Civil Justice and Girls Inc. of Chicago. She has proven leadership skills derived from her significant experience as an executive leader at large, highly regulated companies, and her background in legal, regulatory, compliance and governance matters will bring valuable insights to the Board.

*Bradley Halverson* is the former Group President and Chief Financial Officer of Caterpillar Inc., the world’s leading manufacturer of construction and mining equipment, diesel and gas engines, turbines and locomotives. Prior to serving as Group President and CFO from 2013 to 2018, he held a series of positions with increasing responsibility during his 30-year tenure with the Fortune 100 company, including vice president, Financial Services; corporate controller, Global Finance & Strategic Services; and corporate business development manager, Corporate Services, among others since joining the company in 1988. Mr. Halverson currently serves on the boards of Sysco Corporation and Lear Corporation. In addition, he serves on the board of Easter Seals Central Illinois, Inc. He previously served as a director for Custom Truck One Source from 2018-2021. Mr. Halverson’s deep expertise in accounting, financial reporting and corporate finance, and his leadership experience in the areas of executive leadership and management, corporate strategy development, mergers and acquisitions, risk management, information technology systems oversight and international business will provide the Board with critical perspectives on strategic, financial and other public company issues.

*Charles Harrington* is the chairman and former CEO of Parsons Corporation, a technology services company in the global defense, intelligence and critical infrastructure markets. He served as Chairman and CEO of the company from 2008 to 2021, following previous roles within the company, including Executive Vice President, CFO and Treasurer; President, Commercial Technology Group; and president, Communications Technology Group, from 1999 to 2002, among others. In addition to serving as chairman of Parsons, Mr. Harrington serves on the boards of J.G. Boswell Company and California Polytechnic State University San Luis Obispo Foundation. He previously served on the board of The AES Corporation from 2013 to 2020. Mr. Harrington extensive leadership experience in operations, finance and business development will provide significant value to the Board.

*Julie Holzrichter* currently serves as chief operating officer of CME Group, the world’s leading derivatives marketplace. Prior to being appointed to her current role in 2014, she held various roles of increasing responsibility, including senior managing director of Global Operations; managing director, Global Operations; and director, Operations, among others, having led the integration of global operations for a number of multi-billion-dollar mergers and acquisitions throughout her tenure. Ms. Holzrichter serves on the board of the National Futures Association and is a member of the Futures Industry Association, ChicagoFirst and the CME Group Women’s Initiative Network. Her extensive experience leading the operations of CME Group’s market operations, global command center, trading floor operations, global market solutions and services, data centers and critical infrastructure, global security, business continuity and crisis management will provide valuable insight to the Board.

Ashish Khandpur currently serves as President of the Transportation & Electronics business group for 3M Company, a Fortune 100 global corporation operating in the fields of transportation, electronics, worker safety, health care, consumer goods and industry. During his 26-year career with 3M, he has held a series of roles with increasing responsibility, including Executive Vice President, Transportation & Electronics; Executive Vice President, Electronics & Energy; and Senior Vice President, Research & Development and Chief Technology Officer, among other roles. Mr. Khandpur's extensive engineering background and deep experience in global operations and research and development will provide an invaluable perspective to the Board.

On January 31, 2022, the Board assigned Joseph Dominguez, Julie Holzrichter and Ashish Khandpur as Class I directors, whose terms expire at the first annual meeting of shareholders following the Distribution, which the Company expects to hold in 2023; Rhonda Ferguson, Bradley Halverson and Charles Harrington as Class II directors, whose terms expire at the following year's annual meeting of shareholders, which the Company expects to hold in 2024; and Laurie Brlas, Yves de Balmann, Robert Lawless and John Richardson as Class III directors, whose terms expire at the following year's annual meeting of shareholders, which the Company expects to hold in 2025. Commencing with the fourth annual meeting of shareholders following the Distribution, expected to be held in 2026, all of our directors will stand for election each year for annual terms, and our Board will therefore no longer be divided into three classes.

### **Executive Officers**

Effective as of the Effective Time, the persons set forth in the table below were appointed to the offices of the Company set forth beside each person's name:

<b>Name</b>	<b>Age</b>	<b>Position(s)</b>
Joseph Dominguez	59	President and Chief Executive Officer
Daniel Eggers	46	Executive Vice President and Chief Financial Officer
Bryan Hanson	56	Executive Vice President and Chief Generation Officer
James McHugh	50	Executive Vice President and Chief Commercial Officer
Matthew Bauer	44	Senior Vice President and Controller (Principal Accounting Officer)

On January 31, 2022, the Board adopted certain compensation plans regarding the Company's executive officers, to be effective February 1, 2022, which are materially similar to the plans in place for executive officers of Exelon prior to the Distribution. Information regarding the Company's executive compensation plans can be found in the section entitled "Executive and Director Compensation" in the Information Statement, which is incorporated herein by reference.

Mr. Dominguez's compensation includes an annual base salary of \$1,050,000, an annual incentive program target opportunity of 135% of his base salary, and a long-term incentive target valued at \$7,533,000, consistent with the Constellation Energy Corporation 2022 Long-Term Incentive Plan ("LTIP"). Mr. Eggers' compensation includes an annual base salary of \$650,000, an annual incentive program target opportunity of 90% of his base salary, and a long-term incentive target valued at \$1,765,000, consistent with the LTIP. Mr. Hanson's compensation includes an annual base salary of \$725,000, an annual incentive program target opportunity of 85% of his base salary, and a long-term incentive target valued at \$2,200,000, consistent with the LTIP. Mr. McHugh's compensation includes an annual base salary of \$663,570, an annual incentive program target opportunity of 80% of his base salary, and a long-term incentive target valued at \$1,675,000, consistent with the LTIP. Mr. Bauer's compensation includes an annual base salary of \$280,263, an annual incentive program target opportunity of 40% of his base salary, and a long-term incentive target valued at \$226,000, consistent with the LTIP. Under the LTIP, long-term incentives ("LTI") for each of the individuals above include performance share awards (accounting for sixty-seven percent of target LTI value) and restricted stock units (accounting for thirty-three percent of target LTI value). Payouts on both the annual incentive program and the performance share awards will be based on the achievement of pre-established performance targets. Mr. Dominguez remains eligible for benefits similar to those of other Constellation executives, including, without limitation, participation in Constellation's health, welfare, retirement, relocation and severance plans.

### Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

In connection with the Distribution, on January 31, 2022, the Company filed Amended and Restated Articles of Incorporation (“Charter”) with the Department of State of the Commonwealth of Pennsylvania, which became effective on January 31, 2022. The Amended and Restated Bylaws of the Company (the “Bylaws”) also became effective on January 31, 2022.

A summary of the material provisions of the Charter and Bylaws can be found in the section entitled “Description of Capital Stock” in the Information Statement, which is incorporated herein by reference. The descriptions contained in the Information Statement and this Current Report on Form 8-K do not purport to be complete and are qualified in their entirety by reference to the full text of the Charter and Bylaws, which are attached as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

### Item 7.01. Regulation FD Disclosure.

On February 2, 2022, the Company issued a press release announcing the completion of the Distribution. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

In accordance with General Instruction B.2 of Form 8-K, the information contained in this Item 7.01, including Exhibit 99.1, shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth in such a filing.

### Item 9.01. Financial Statements and Exhibits.

#### Exhibit

<u>No.</u>	<u>Description</u>
<a href="#">2.1</a>	<a href="#">Separation Agreement, dated January 31, 2022, between Exelon and Constellation</a>
<a href="#">3.1</a>	<a href="#">Amended and Restated Articles of Incorporation of Constellation Energy Corporation, effective January 31, 2022</a>
<a href="#">3.2</a>	<a href="#">Amended and Restated Bylaws of Constellation Energy Corporation, effective January 31, 2022</a>
<a href="#">10.1</a>	<a href="#">Transition Services Agreement, dated January 31, 2022, between Exelon and Constellation</a>
<a href="#">10.2</a>	<a href="#">Tax Matters Agreement, dated January 31, 2022, between Exelon and Constellation</a>
<a href="#">10.3</a>	<a href="#">Employee Matters Agreement, dated January 31, 2022, between Exelon and Constellation</a>
<a href="#">99.1</a>	<a href="#">Press Release dated February 2, 2022</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* \* \* \* \*

This Current Report on Form 8-K contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to risks and uncertainties, including, among others. Words such as “could,” “may,” “expects,” “anticipates,” “will,” “targets,” “goals,” “projects,” “intends,” “plans,” “believes,” “seeks,” “estimates,” “predicts,” and variations on such words, and similar expressions that reflect our current views with respect to future events and operational, economic, and financial performance, are intended to identify such forward-looking statements.

The factors that could cause actual results to differ materially from the forward-looking statements made by the Company include those factors discussed herein as well as the items discussed in the Cautionary Note Regarding Forward-Looking Statements and Risk Factors in the Company’s Form 10 Registration Statement, as amended.

Investors are cautioned not to place undue reliance on these forward-looking statements, whether written or oral, which apply only as of the date of this Current Report on Form 10-K. The Company undertakes no obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this Current Report on Form 10-K.

---

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**CONSTELLATION ENERGY CORPORATION**

/s/ Daniel Eggers

Daniel Eggers

Executive Vice President and Chief Financial Officer

Constellation Energy Corporation

February 2, 2022

---

**SEPARATION AGREEMENT**

**By and Between**

**EXELON CORPORATION**

**and**

**CONSTELLATION ENERGY CORPORATION**

**Dated**

**January 31, 2022**

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I DEFINITIONS</b>	<b>2</b>
Section 1.1	<u>Definitions</u> 2
Section 1.2	<u>Interpretation</u> 13
Section 1.3	<u>Certain Matters Governed Exclusively by Ancillary Agreements</u> 14
Section 1.4	<u>Intercompany and Other Agreements</u> 15
Section 1.5	<u>Restricted Entities</u> 15
<b>ARTICLE II TRANSACTIONS</b>	<b>15</b>
Section 2.1	<u>Transfers of Assets and Assumptions of Liabilities</u> 15
Section 2.2	<u>Shared Contracts</u> 19
Section 2.3	<u>Termination of Intercompany Agreements</u> 19
Section 2.4	<u>Settlement of Intercompany Accounts</u> 20
Section 2.5	<u>Replacement of Guarantees</u> 21
Section 2.6	<u>Covenant Not to Sue</u> 21
<b>ARTICLE III CERTAIN ACTIONS PRIOR TO THE DISTRIBUTION</b>	<b>21</b>
Section 3.1	<u>SEC and Other Securities Filings</u> 21
Section 3.2	<u>NASDAQ Listing Application</u> 22
Section 3.3	<u>Distribution Agent</u> 22
Section 3.4	<u>Governmental Approvals and Consents</u> 22
Section 3.5	<u>Ancillary Agreements</u> 22
Section 3.6	<u>Governance Matters</u> 23
<b>ARTICLE IV THE DISTRIBUTION</b>	<b>23</b>
Section 4.1	<u>Distribution</u> 23
<b>ARTICLE V CONDITIONS</b>	<b>24</b>
Section 5.1	<u>Conditions Precedent to Consummation of the Distribution</u> 24
Section 5.2	<u>Right Not to Close</u> 25
<b>ARTICLE VI NO REPRESENTATIONS OR WARRANTIES</b>	<b>26</b>
Section 6.1	<u>Disclaimer of Representations and Warranties</u> 26
Section 6.2	<u>As Is, Where Is</u> 26
<b>ARTICLE VII CERTAIN COVENANTS AND ADDITIONAL AGREEMENTS</b>	<b>26</b>
Section 7.1	<u>Insurance Matters</u> 26
Section 7.2	<u>D&amp;O Policies</u> 28
Section 7.3	<u>Post-Effective Time Conduct</u> 29
Section 7.4	<u>Use of Marks</u> 29
Section 7.5	<u>Separation Oversight Committee</u> 30
Section 7.6	<u>Responding to Regulatory Inquiries</u> 30
Section 7.7	<u>Conveyance of Certain Real Property</u> 31
Section 7.8	<u>Decommissioning</u> 32

---

<b>ARTICLE VIII ACCESS TO INFORMATION; CONFIDENTIALITY; PRIVILEGE</b>		<b>32</b>
Section 8.1	<u>Agreement for Exchange of Information</u>	32
Section 8.2	<u>Ownership of Information</u>	33
Section 8.3	<u>Compensation for Providing Information</u>	33
Section 8.4	<u>Retention of Records</u>	33
Section 8.5	<u>Limitation of Liability</u>	34
Section 8.6	<u>Production of Witnesses</u>	34
Section 8.7	<u>Confidentiality</u>	34
Section 8.8	<u>Privileged Matters</u>	35
Section 8.9	<u>Data Separation Principles</u>	38
Section 8.10	<u>Financial Information Certifications</u>	38
Section 8.11	<u>Policies and Best Practices</u>	38
<b>ARTICLE IX MUTUAL RELEASES; INDEMNIFICATION</b>		<b>38</b>
Section 9.1	<u>Release of Pre-Distribution Claims</u>	38
Section 9.2	<u>Indemnification by Constellation</u>	40
Section 9.3	<u>Indemnification by Exelon</u>	41
Section 9.4	<u>Indemnification Obligations Net of Taxes, Insurance Proceeds and Third-Party Proceeds</u>	41
Section 9.5	<u>Procedures for Indemnification of Third-Party Claims</u>	43
Section 9.6	<u>Additional Matters</u>	44
Section 9.7	<u>Right to Contribution</u>	45
Section 9.8	<u>Remedies Cumulative</u>	45
Section 9.9	<u>Survival of Indemnities</u>	45
Section 9.10	<u>Limitation on Liability</u>	45
Section 9.11	<u>Management of Actions</u>	46
<b>ARTICLE X DISPUTE RESOLUTION</b>		<b>46</b>
Section 10.1	<u>Appointed Representative</u>	46
Section 10.2	<u>Negotiation and Dispute Resolution</u>	47
Section 10.3	<u>Conduct During Dispute Resolution Process</u>	49
<b>ARTICLE XI TERMINATION</b>		<b>49</b>
Section 11.1	<u>Termination</u>	49
Section 11.2	<u>Effect of Termination</u>	49
<b>ARTICLE XII MISCELLANEOUS</b>		<b>49</b>
Section 12.1	<u>Further Assurances</u>	49
Section 12.2	<u>Payment of Expenses</u>	49
Section 12.3	<u>Amendments and Waivers</u>	49
Section 12.4	<u>Entire Agreement</u>	50
Section 12.5	<u>Survival of Agreements</u>	50

---

Section 12.6	<u>Third-Party Beneficiaries</u>	50
Section 12.7	<u>Coordination with Other Agreements</u>	50
Section 12.8	<u>Notices</u>	50
Section 12.9	<u>Counterparts; Electronic Delivery</u>	51
Section 12.10	<u>Severability</u>	51
Section 12.11	<u>Assignability; Binding Effect</u>	51
Section 12.12	<u>Governing Law</u>	51
Section 12.13	<u>Construction</u>	51
Section 12.14	<u>Performance</u>	51
Section 12.15	<u>Title and Headings</u>	52
Section 12.16	<u>Schedules and Exhibits</u>	52

#### Schedules

Schedule I	<u>Constellation Entities</u>
Schedule II	<u>Constellation Assets</u>
Schedule III	<u>Constellation Liabilities</u>
Schedule IV	<u>Exelon Retained Assets</u>
Schedule V	<u>Exelon Retained Liabilities</u>
Schedule VI	<u>Intercompany Accounts</u>
Schedule VII	<u>Other Agreements</u>
Schedule VIII	<u>Restricted Entities</u>
Schedule IX	<u>Other Excepted Agreements</u>
Schedule X	<u>Intercompany Agreements</u>
Schedule XI	<u>Ancillary Agreements</u>
Schedule XII	<u>Agreements Not Considered Ancillary Agreements</u>
Schedule XIII	<u>Exelon Names and Marks</u>
Schedule XIV	<u>Constellation Marks</u>
Schedule XV	<u>Data Separation Principles</u>
Schedule XVI	<u>Liabilities Not Released</u>
Schedule XVII	<u>Constellation Managed Actions</u>
Schedule XVIII	<u>Exelon Managed Actions</u>
Schedule XIX	<u>Jointly Managed Actions</u>

#### Exhibit:

Exhibit A	<u>Form of Certification</u>
Exhibit B	<u>Separation Oversight Committee</u>

---

## SEPARATION AGREEMENT

THIS SEPARATION AGREEMENT (this “**Agreement**”) is entered into January 31, 2022, by and between Exelon Corporation, a Pennsylvania corporation (“**Exelon**”), and Constellation Energy Corporation, a Pennsylvania corporation and a direct, wholly-owned subsidiary of Exelon (“**Constellation**”). Exelon and Constellation are sometimes referred to herein individually as a “**Party**,” and collectively as the “**Parties**.” Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in Section 1.1.

### RECITALS

WHEREAS, Exelon conducts (i) a business involving the regulated transmission and distribution of electricity and natural gas, principally through Exelon Energy Delivery Company, LLC and its Subsidiaries (the “**Exelon Business**”), and (ii) a business involving the competitive power generation and marketing and trading of electricity and gas, principally through Exelon Generation Company, LLC and its Subsidiaries (the “**Constellation Business**”);

WHEREAS, the board of directors of Exelon has determined that it is advisable and in the best interests of Exelon and its shareholders to separate the Exelon Business and the Constellation Business, which separation shall be effected by Exelon contributing the Constellation Business to Constellation and then distributing the Constellation shares that it receives in exchange to Exelon’s shareholders on a pro rata basis (the “**Distribution**”), thereby causing Constellation to become a separate, publicly-traded company;

WHEREAS, the Distribution will, among other items, (i) allow the Exelon Business and the Constellation Business to more effectively pursue their own distinct operating priorities and strategies, without taking into account potentially conflicting or competing needs and objectives of two disparate businesses operating in a single company, (ii) permit each company to concentrate its financial resources solely on its own operations, providing greater flexibility to invest capital in its business in a time and manner appropriate for its distinct strategy and business needs, (iii) permit the creation of equity-based incentive compensation programs for each of the companies that is expected to reflect more closely the efforts and performance of each company’s management and will allow each company to better recruit, retain and motivate employees pursuant to compensation policies that are appropriate for their respective lines of business and (iv) improve investor understanding about the Constellation Business and Exelon Business;

WHEREAS, Constellation has been incorporated for these purposes and has not engaged in activities except in preparation for the Distribution;

WHEREAS, it is the intention of the Parties that the Distribution, together with certain related transactions, will qualify as a tax-free reorganization for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code;

WHEREAS, this Agreement is intended to be, and is hereby adopted as, a “plan of reorganization” within the meaning of Treas. Regulation Section 1.368-2(g); and

WHEREAS, it is appropriate and desirable to set forth the principal corporate transactions required to effect the Distribution and to set forth certain other agreements that will, following the Distribution, govern certain matters relating to the Distribution and the post-Distribution relationship between Exelon and/or its Subsidiaries, on the one hand, and, Constellation and/or its Subsidiaries, on the other hand.

---

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.1 **Definitions**. As used in this Agreement, the following terms shall have the respective meanings set forth in this **Section 1.1**:

“**AAA**” and “**AAA Rules**” have the respective meanings set forth in **Section 10.2(b)**.

“**Access Period**” has the meaning set forth in **Section 8.1(a)**.

“**Action**” means any demand, claim, complaint, petition, action, suit, countersuit, arbitration, litigation, inquiry, proceeding or investigation by or before any Governmental Authority or any arbitration or mediation tribunal or authority.

“**Affiliate**” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. For this purpose, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by contract or otherwise. For the avoidance of doubt, on and after the Effective Time, no member of the Constellation Group shall be deemed an Affiliate of any member of the Exelon Group, and no member of the Exelon Group shall be deemed an Affiliate of any member of the Constellation Group.

“**Agreement**” has the meaning set forth in the preamble to this Agreement and includes all Schedules and Exhibits attached hereto or delivered pursuant hereto.

“**Ancillary Agreements**” has the meaning set forth in **Section 3.5**.

“**Appointed Representative**” has the meaning set forth in **Section 10.1**.

“**Assets**” means all assets, properties and rights of every kind and nature (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible or intangible, or accrued or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person, including the following:

(a) all accounting and other books, records, files and Personnel Records, whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape, electronic recording or any other form or medium;

(b) all apparatus, computers and other electronic data processing equipment, fixtures, machinery, furniture, office and other equipment, including hardware systems, circuits and other computer and telecommunication assets and equipment, automobiles, trucks, aircraft, rolling stock, vessels, motor vehicles and other transportation equipment, special and general tools, test devices, prototypes and models and other tangible personal property;

(c) all inventories of materials, parts, raw materials, supplies, work-in-process and finished goods and products;

- (d) all plant, property and equipment, whether as owner, lessor, sublessor, lessee, sublessee or otherwise;
- (e) all interests in real property of whatever nature, including buildings, land, structures, improvements and fixtures thereon, and all easements and rights-of-way appurtenant thereto, and all leasehold interests, whether as owner, mortgagee or holder of a Security Interest in real property, lessor, sublessor, lessee, sublessee or otherwise;
- (f) all interests in any capital stock of, or other equity interests in, any Subsidiary or any other Person; all bonds, notes, debentures or other securities issued by any Subsidiary or any other Person; all loans, advances or other extensions of credit or capital contributions to any Subsidiary or any other Person; all other investments in securities of any Person; and all rights as a partner, joint venturer or participant;
- (g) all license agreements, leases of personal property, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products and other Contracts and all rights arising thereunder;
- (h) all deposits, letters of credit, performance bonds and other surety bonds;
- (i) all written technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals and materials and analyses prepared by consultants and other third parties;
- (j) all United States, state, multinational and foreign intellectual property, including patents, copyrights, trade names, trademarks, service marks, slogans, logos, trade dresses and other source indicators and the goodwill of the business symbolized thereby; all registrations, applications, recordings, disclosures, renewals, continuations, continuations-in-part, divisions, reissues, reexaminations, foreign counterparts and other legal protections and rights related to any of the foregoing; mask works, trade secrets, inventions and other proprietary information, including know-how, processes, formulae, techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals, discoveries, inventions, licenses from third parties granting the right to use any of the foregoing and all tangible embodiments of the foregoing in whatever form or medium;
- (k) all computer applications, programs, software and other code (in object and source code form), including operating software, network software, firmware, middleware, design software, design tools, systems documentation, instructions, ASP, HTML, DHTML, SHTML and XML files, cgi and other scripts, APIs, web widgets, algorithms, models, methodologies, files, documentation related to any of the foregoing and all tangible embodiments of the foregoing in whatever form or medium now known or yet to be created;
- (l) all websites, Internet URLs, domain names, social media handles and Internet user names, databases, content, text, graphics, images, audio, video, data and other copyrightable works or other works of authorship including all translations, adaptations, derivations and combinations thereof;
- (m) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, subscriber, customer and vendor data, correspondence and lists, product literature and other advertising and promotional materials, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, server and traffic logs, quality records and reports and other books, records, studies, surveys, reports, plans, business records and documents;

- (n) all prepaid expenses, trade accounts and other accounts and notes receivable (whether current or non-current);
- (o) all claims or rights against any Person arising from the ownership of any other Asset, all rights in connection with any bids or offers, all Actions, judgments or similar rights, all rights under express or implied warranties, all rights of recovery and all rights of setoff of any kind and demands of any nature, in each case whether accrued or contingent, whether in tort, contract or otherwise and whether arising by way of counterclaim or otherwise;
- (p) all rights under insurance policies and all rights in the nature of insurance, indemnification or contribution;
- (q) all franchise rights, licenses (including radio and similar licenses), permits, consents, approvals and authorizations that have been issued by any Governmental Authority and all pending applications therefor;
- (r) cash, bank accounts, lock boxes and other deposit arrangements;
- (s) interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements;
- (t) all regulatory assets; and
- (u) all goodwill as a going concern and other intangible properties.

“**Business Day**” means a day other than a Saturday, a Sunday or a day on which banking institutions located in the State of Illinois and the Commonwealth of Pennsylvania are authorized or obligated by applicable Law or executive order to close.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**ComEd**” has the meaning set forth in [Section 7.7\(a\)](#).

“**ComEd Properties**” has the meaning set forth in [Section 7.7\(a\)](#).

“**Confidential Information**” means any and all information in written, oral (including a recording), electronic or visual form:

- (a) that is required to be maintained in confidence by any Law, by any requirements of reliability organizations or under any Contract;
- (b) concerning market studies, business plans, computer hardware, computer software (including all versions, source and object codes and all related files and data), software and database technologies, systems, structures and architectures, and other similar technical or business information;
- (c) concerning any business and its affairs, which includes earnings reports and forecasts, macro-economic reports and forecasts, business and strategic plans, general market evaluations and surveys, litigation presentations and risk assessments, financing and credit-related information, financial projections, tax returns and accountants’ materials, business plans, strategic plans and Contracts, in each case however documented, and other similar financial or business information;

(d) constituting communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), communications and materials otherwise related to or made or prepared in connection with or in preparation for any dispute, legal proceeding or regulatory proceeding; or

(e) constituting notes, analyses, compilations, studies, summaries and other material that contain or are based, in whole or in part, upon any information included in any of the foregoing clauses (a) through (d).

“**Consent**” means any consent, waiver or approval from, or notification requirement to, any Person other than a member of either Group.

“**Constellation**” has the meaning set forth in the preamble to this Agreement.

“**Constellation Assets**” means, without duplication, the following Assets:

(a) all Assets held by the Constellation Group;

(b) all interests in the capital stock of, or other equity interests in, the members of the Constellation Group (other than Constellation);

(c) all Assets reflected on the Constellation Business Balance Sheet, and all Assets acquired after the date of the Constellation Business Balance Sheet that, had they been acquired on or before such date and owned as of such date, would have been reflected on the Constellation Business Balance Sheet if prepared in accordance with GAAP applied on a consistent basis, subject to any dispositions of such Assets subsequent to the date of the Constellation Business Balance Sheet;

(d) any additional Assets listed or described on Schedule II;

(e) the rights related to the Constellation Portion of any Shared Contract;

(f) all other Assets that are expressly provided by this Agreement or any Ancillary Agreement as Assets to be assigned to or retained by, or allocated to, any member of the Constellation Group; and

(g) all Assets held by a member of the Exelon Group that are determined by Exelon, in good faith prior to the Distribution, to be primarily related to or used or held for use primarily in connection with the business or operations of the Constellation Business (unless otherwise expressly provided in connection with this Agreement).

Notwithstanding the foregoing, the Constellation Assets shall not include (i) any Exelon Retained Assets, (ii) any Assets to the extent governed by the Tax Matters Agreement, (iii) any Assets to the extent governed by the Employee Matters Agreement, (iv) the rights related to the Exelon Portion of any Shared Contracts and (v) any Assets that are determined by Exelon, in good faith prior to the Distribution, to be primarily related to the business or operations of the Exelon Business (unless otherwise expressly provided in this Agreement).

“**Constellation Business**” has the meaning set forth in the recitals to this Agreement. For the sake of clarity, Constellation Business also includes any other business conducted by any member of the Constellation Group as of or prior to the date of this Agreement.

“**Constellation Business Balance Sheet**” means the balance sheet of ExGen, including the notes thereto, as of December 31, 2020, included in the Information Statement.

“**Constellation Common Stock**” means the common stock, without par value, of Constellation.

“**Constellation Entities**” means the entities set forth on Schedule I and any direct or indirect entity formed by such entities after the date of this Agreement and prior to the Distribution Date.

“**Constellation Group**” means (a) Constellation, (b) the Constellation Entities and (c) each Person that becomes a subsidiary of Constellation after the Distribution, including in each case any Person that is merged or consolidated with or into, or the result of a statutory division of, Constellation or any Subsidiary of Constellation.

“**Constellation Indemnitees**” means each member of the Constellation Group and their Affiliates and each of their respective current or former shareholders, directors, officers, agents and employees (in each case, in such Person’s respective capacity as such) and their respective heirs, executors, administrators, successors and assigns.

“**Constellation Liabilities**” means, without duplication, the following Liabilities:

- (a) all Liabilities of the Constellation Group;
- (b) all Liabilities to the extent relating to, arising out of or resulting from:
  - (i) the operation or conduct of the Constellation Business as conducted at any time prior to the Distribution (including any Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority), which act or failure to act relates to the Constellation Business);
  - (ii) the operation or conduct of the Constellation Business or any other business conducted by Constellation or any other member of the Constellation Group at any time after the Distribution (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority));
  - (iii) any terminated, divested or discontinued businesses or operations of the Constellation Business; or
  - (iv) the Constellation Assets;
- (c) all Liabilities reflected as liabilities or obligations on the Constellation Business Balance Sheet, and all Liabilities arising or assumed after the date of the Constellation Business Balance Sheet that, had they arisen or been assumed on or before such date and been existing obligations as of such date, would have been reflected on the Constellation Business Balance Sheet if prepared in accordance with GAAP applied on a consistent basis, subject to any discharge of such Liabilities subsequent to the date of the Constellation Business Balance Sheet;
- (d) any additional Liabilities listed or described on Schedule III;

(e) the obligations related to the Constellation Portion of any Shared Contract;

(f) all other Liabilities that are expressly provided by this Agreement or any Ancillary Agreement as Liabilities to be assumed or retained by, or allocated to, any member of the Constellation Group; and

(g) all Liabilities to the extent relating to, arising out of or resulting from any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in, or incorporated by reference into, the Registration Statement or the Information Statement, any equity roadshow presentation (whether or not filed with the SEC), any registration statement, offering memorandum or other marketing materials relating to the ExGen Credit Facility and any other documents filed with the SEC in connection with the Distribution or as contemplated by this Agreement, in each case, other than with respect to the Exelon Disclosure Sections.

Notwithstanding the foregoing, the Constellation Liabilities shall not include (i) any Exelon Retained Liabilities, (ii) any Liabilities to the extent governed by the Tax Matters Agreement, (iii) any Liabilities to the extent governed by the Employee Matters Agreement, (iv) any obligations related to the Exelon Portion of any Shared Contract or (v) any Liabilities that are determined by Exelon, in good faith prior to the Distribution, to be primarily related to the business or operations of the Exelon Business (unless otherwise expressly provided in this Agreement).

“**Constellation Marks**” has the meaning set forth in [Section 7.4\(b\)\(i\)](#).

“**Constellation Portion**” has the meaning set forth in [Section 2.2\(a\)](#).

“**Contract**” means any written, oral, implied or other contract, agreement, covenant, lease, license, guaranty, indemnity, representation, warranty, option, assignment, sales order, purchase order, power of attorney, instrument or other commitment, assurance, undertaking or arrangement that is binding on any Person or entity or any part of its property under applicable Law.

“**Deferred Asset**,” “**Deferred Liability**” and “**Deferred Asset or Liability**” have the respective meanings set forth in [Section 2.1\(b\)\(ii\)](#).

“**Definitive Agreements**” has the meaning set forth in [Section 7.7\(b\)](#).

“**Delaware Courts**” has the meaning set forth in [Section 10.2\(b\)\(v\)](#).

“**Dispute**” has the meaning set forth in [Section 10.2\(a\)\(i\)](#).

“**Dispute Notice**” has the meaning set forth in [Section 10.2\(a\)\(i\)](#).

“**Dispute Committee**” has the meaning set forth in [Section 10.2\(a\)\(i\)](#).

“**Dispute Referral Notice**” has the meaning set forth in [Section 10.2\(a\)\(ii\)](#).

“**Distribution**” has the meaning set forth in the recitals to this Agreement.

“**Distribution Agent**” means EQ Shareowner Services.

“**Distribution Date**” means the date on which the Distribution occurs, such date to be determined by, or under the authority of, the board of directors of Exelon, in its sole and absolute discretion.

**“Downgrade Event”** means ExGen’s senior unsecured non-credit-enhanced debt securities shall be downgraded below (i) Baa3 by Moody’s Investors Service, Inc. (or its successor), (ii) BBB- by Standard & Poor’s Ratings (or its successor) or (iii) BBB- by Fitch Ratings, Inc. (or its successor).

**“Effective Time”** means 12:01 a.m. (Eastern time) on February 1, 2022, or such other time agreed to by the Parties from time to time.

**“Employee Matters Agreement”** means the Employee Matters Agreement dated as of the date of this Agreement between Exelon and Constellation.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“Exelon”** has the meaning set forth in the preamble to this Agreement.

**“Exelon Assets”** means, without duplication, the following Assets:

- (a) all Assets of the Exelon Group;
- (b) the Exelon Retained Assets;
- (c) all Assets held by a member of the Constellation Group that are determined by Exelon, in good faith prior to the Distribution, to be primarily related to or used or held for use primarily in connection with the business or operations of the Exelon Business (unless otherwise expressly provided in connection with this Agreement);
- (d) all interests in the capital stock, or other equity interests in, the members of the Exelon Group (other than Exelon); and
- (e) the rights related to the Exelon Portion of any Shared Contract.

Notwithstanding the foregoing, the Exelon Assets shall not include (i) any Assets to the extent governed by the Tax Matters Agreement, (ii) any Assets to the extent governed by the Employee Matters Agreement, (iii) the rights related to the Constellation Portion of any Shared Contracts and (iv) the Constellation Assets.

**“Exelon Business”** has the meaning set forth in the recitals to this Agreement. For the sake of clarity, the Exelon Business does not include the Constellation Business.

**“Exelon Common Stock”** means the common stock, without par value, of Exelon.

**“Exelon Disclosure Sections”** means all information set forth in or omitted from the Registration Statement or Information Statement to the extent relating to (a) Exelon, (b) the Exelon Group, (c) the Exelon Assets, (d) the Exelon Liabilities or (e) the substantive disclosure set forth in the Information Statement relating to Exelon’s board of directors’ consideration of the Distribution, including the section entitled “The Separation -- Reasons for the Separation.”

**“Exelon Group”** means, collectively, Exelon and the Subsidiaries and entities held by Exelon other than Constellation and the Constellation Entities.

**“Exelon Guarantee”** means any Guarantee issued, entered into or otherwise put in place by any member of the Exelon Group to support or facilitate, or otherwise in respect of, (a) the obligations of any member of the Constellation Group or any of the Constellation Business or (b) Contracts, commitments, Liabilities, permits or licenses of any member of the Constellation Group or any of the Constellation Business. Without limiting the foregoing, a sublease from a member of the Exelon Group, as sublandlord, to a member of the Constellation Group, as subtenant, shall be considered an Exelon Guarantee.

**“Exelon Indemnitees”** means each member of the Exelon Group and their Affiliates (other than Constellation and the Constellation Entities) and each of their respective current or former shareholders, directors, officers, agents and employees (in each case, in such Person’s respective capacity as such) and their respective heirs, executors, administrators, successors and assigns.

**“Exelon Liabilities”** means, without duplication, the following Liabilities:

- (a) all Liabilities of the Exelon Group;
- (b) all Liabilities to the extent relating to, arising out of or resulting from:
  - (i) the operation or conduct of the Exelon Business as conducted at any time prior to the Distribution (including any Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority), which act or failure to act relates to the Exelon Business);
  - (ii) the operation or conduct of the Exelon Business or any other business conducted by Exelon or any other member of the Exelon Group at any time after the Distribution (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority));
  - (iii) any terminated, divested or discontinued businesses or operations of the Exelon Business (other than the Constellation Business, the Constellation Group and any terminated, divested or discontinued businesses or operations of the Constellation Business); or
  - (iv) the Exelon Assets;
- (c) the Exelon Retained Liabilities;
- (d) any obligations related to the Exelon Portion of any Shared Contract;
- (e) any Liabilities that are determined by Exelon, in good faith prior to the Distribution, to be primarily related to the business or operations of the Exelon Business (unless otherwise expressly provided in this Agreement); and
- (f) all Liabilities to the extent relating to, arising out of or resulting from any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to the Exelon Disclosure Sections.

Notwithstanding the foregoing, the Exelon Liabilities shall not include (i) any Liabilities to the extent governed by the Tax Matters Agreement, (ii) any Liabilities to the extent governed by the Employee Matters Agreement, (iii) any obligations related to the Constellation Portion of any Shared Contract or (iv) the Constellation Liabilities.

**“Exelon Names and Marks”** has the meaning set forth in [Section 7.4\(a\)\(i\)](#).

**“Exelon Portion”** has the meaning set forth in [Section 2.2\(a\)](#).

**“Exelon Retained Assets”** means any specified Assets set forth on Schedule IV that, notwithstanding clauses (a) through (g) of the definition of “Constellation Assets,” shall not constitute Constellation Assets and are to be retained by the Exelon Group.

**“Exelon Retained Liabilities”** means any specified Liabilities set forth on Schedule V that, notwithstanding clauses (a) through (g) of the definition of “Constellation Liabilities,” shall not constitute Constellation Liabilities and are to be retained by the Exelon Group.

**“ExGen”** means Exelon Generation Company, LLC, a Pennsylvania limited liability company.

**“ExGen Credit Facility”** means the credit agreement to be entered into by ExGen prior to the Effective Time.

**“ExGen Properties”** has the meaning set forth in Section 7.7(a).

**“Governmental Approval”** means any notice, report or other filing to be given to or made with, or any release, consent, substitution, approval, amendment, registration, permit or authorization from, any Governmental Authority.

**“Governmental Authority”** means any U.S. federal, state, local or non-U.S. court, government, department, commission, board, bureau, agency, official or other regulatory, reliability, administrative or governmental authority.

**“Group”** means one or both of the Exelon Group and the Constellation Group, as the context requires.

**“Guarantee”** means any guarantee (including guarantees of performance or payment under Contracts, commitments, Liabilities, permits and licenses), letter of credit or other credit or credit support arrangement or similar assurance, including surety bonds, bid bonds, advance payment bonds, performance bonds, payment bonds, retention and/or warranty bonds or other bonds or similar instruments, and working capital or liquidity support or similar keep-well type arrangements.

**“Indemnifying Party”** has the meaning set forth in Section 9.4(a).

**“Indemnitee”** has the meaning set forth in Section 9.4(a).

**“Indemnity Payment”** has the meaning set forth in Section 9.4(a).

**“Information Statement”** means the information statement, a preliminary version of which is filed as Exhibit 99.1 to the Registration Statement, and any related documentation to be provided to holders of Exelon Common Stock in connection with the Distribution, including any amendments or supplements thereto.

**“Insurance Policy”** means any insurance policies and insurance Contracts, including general liability, property and casualty, workers’ compensation, automobile, directors and officers liability, errors and omissions, employee dishonesty and fiduciary liability policies, whether, in each case, in the nature of primary, excess, umbrella or self-insurance coverage, together with all rights, benefits and privileges thereunder.

**“Insurance Proceeds”** means those monies (in each case, net of any out-of-pocket costs or expenses incurred in the collection thereof):

(a) received by an insured Person from any insurer, insurance underwriter, mutual protection and indemnity club or other risk collective; or

(b) paid on behalf of an insured Person by any insurer, insurance underwriter, mutual protection and indemnity club or other risk collective.

**“Intercompany Account”** means any receivable, payable or loan between any member of the Exelon Group, on the one hand, and any member of the Constellation Group, on the other hand, that exists prior to the Effective Time and is reflected in the records of the relevant members of the Exelon Group and the Constellation Group, except for any such receivable, payable or loan that arises pursuant to (i) the agreements listed in [Section 2.3\(b\)](#) (i) through (v) (inclusive) and (ii) the accounts or arrangements listed in [Schedule VI](#).

**“Intercompany Agreement”** means any Contract between or among any member of the Exelon Group, on the one hand, and any member of the Constellation Group, on the other hand, entered into prior to the Effective Time, but excluding any Contract to which a Person other than any member of the Exelon Group or the Constellation Group is also a party.

**“Intercompany Loan”** means the intercompany loan, from Exelon, as lender, to ExGen, as borrower.

**“IRS”** means the United States Internal Revenue Service.

**“Law”** means any law, statute, ordinance, code, rule, regulation, order, writ, proclamation, judgment, injunction or decree of any Governmental Authority.

**“Liabilities”** means any and all claims, debts, demands, actions, causes of action, suits, damages, fines, penalties, obligations, prohibitions, accruals, accounts payable, reckonings, bonds, indemnities and similar obligations, agreements, promises, guarantees, make-whole agreements and similar obligations, and other liabilities and requirements, including all contractual obligations, whether absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, and including those arising under any Law, Action, threatened or contemplated Action or any award of any arbitrator or mediator of any kind, and those arising under any Contract, including those arising under this Agreement or any Ancillary Agreement, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person. For the avoidance of doubt, Liabilities shall include attorneys’ fees, the costs and expenses of all assessments, judgments, settlements and compromises, and any and all other costs and expenses whatsoever reasonably incurred in connection with anything contemplated by the preceding sentence (including costs and expenses incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions).

**“Losses”** means any and all damages, losses, deficiencies, Liabilities, obligations, penalties, judgments, settlements, claims, payments, interest costs, Taxes, fines and expenses (including the costs and expenses of any and all Actions and demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys’, accountants’, consultants’ and other professionals’ fees and expenses incurred in the investigation or defense thereof or the enforcement of rights hereunder).

**“Merger Commitments Agreement”** means the Assignment and Assumption of Regulatory Commitments Agreement dated as of the date of this Agreement between Exelon and Constellation.

**“Mixed Action”** has the meaning set forth in [Section 9.11\(c\)](#).

**“NASDAQ”** means The NASDAQ Global Select Market.

**“NASDAQ Listing Application”** has the meaning set forth in [Section 3.2\(a\)](#).

“**NERC Agreement**” means the NERC Reliability Services Agreement dated as of the date of this Agreement between Exelon and Constellation.

“**Other Agreements**” refers to the Contracts listed on Schedule VII, including any agreements, assignments, assumptions, releases, deeds, instruments and undertakings delivered in connection with any such Contract or its implementation.

“**Outside Date**” has the meaning set forth in Section 7.7(b).

“**Party**” or “**Parties**” has the meaning set forth in the preamble to this Agreement.

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, a union, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“**Personnel Records**” means all personnel files, data and other personnel information that relates to (a) in the case of the Exelon Group, any current or former employee, officer, director or other service provider of the Exelon Group and any Exelon Employee (as defined in the Employee Matters Agreement) (other than a Constellation Employee (as defined in the Employee Matters Agreement) or any other service provider of the Constellation Group immediately following the Distribution Date), or (b) in the case of the Constellation Group, any Constellation Employee and any other service provider of the Constellation Group immediately following the Distribution Date and, in each case under clauses (a) and (b), other than files, data and information that are (or is) prohibited from being made available as a result of applicable Laws regarding the safeguarding of data privacy or any other legal obligation to maintain the confidentiality of such files, data or information.

“**Previously Owned Plant**” has the meaning set forth in Section 7.8.

“**Properties**” has the meaning set forth in Section 7.7(a).

“**Property Conveyance(s)**” has the meaning set forth in Section 7.7(a).

“**Providing Member**” has the meaning set forth in Section 7.6.

“**Record Date**” means 5:00 p.m. Eastern time on January 20, 2022, which is the date determined by the board of directors of Exelon as the record date for determining holders of Exelon Common Stock entitled to receive shares of Constellation Common Stock in the Distribution.

“**Record Holders**” has the meaning set forth in Section 4.1(a)(i).

“**Registration Statement**” means the registration statement on Form 10 of Constellation with respect to the registration under the Exchange Act of the Constellation Common Stock to be distributed in the Distribution, including any amendments or supplements thereto.

“**Related Trusts**” has the meaning set forth in Section 7.8.

“**Reporting Period**” has the meaning set forth in Section 8.10(b).

“**Requesting Member**” has the meaning set forth in Section 7.6.

“**Restricted Entities**” means the entities listed on Schedule VIII.

“**SEC**” means the United States Securities and Exchange Commission.

“**Security Interest**” means any mortgage, security interest, pledge, lien, charge, claim, option, indenture, right to acquire, right of first refusal, deed of trust, licenses to third parties, leases to third parties, security agreements, voting or other restriction, covenant, condition, encroachment, restriction on transfer, restriction or limitation on use of real or personal property or any other encumbrance of any nature whatsoever, imperfections in or failure of title or defect of title.

“**Separation Oversight Committee**” means the committee described in Exhibit B.

“**Shared Contract**” means any Contract of any member of either Group with a third party that relates in any material respect to both the Constellation Business and the Exelon Business, as identified by Exelon; provided that the Parties may, by mutual consent, elect to include in, or exclude from, this definition any contract or agreement.

“**Subsidiary**” means, with respect to any specified Person, (a) any corporation, partnership, limited liability company, joint venture or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such specified Person or by any one or more of its subsidiaries, or by such specified Person and one or more of its Subsidiaries or (b) any partnership in which such Person is a sole general partner.

“**Tax Matters Agreement**” means the Tax Matters Agreement dated as of the date of this Agreement between Exelon and Constellation.

“**Tax**” and “**Taxes**” means any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers’ compensation, unemployment, disability, property, ad valorem, value added, stamp, excise, severance, occupation, service, sales, use, license, lease, transfer, import, export, alternative minimum, estimated or other tax (including any fee, assessment, or other charge in the nature of or in lieu of any tax), imposed by any governmental entity or political subdivision thereof, and any interest, penalty, additions to tax, or additional amounts in respect of the foregoing.

“**Taxing Authority**” means any national, municipal, governmental, state, federal or other body, or any quasi-governmental or private body, having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

“**Third-Party Claim**” means any assertion by a Person (including any Governmental Authority) who is not a member of the Exelon Group or the Constellation Group of any claim, or the commencement by any such Person of any Action, against any member of the Exelon Group or the Constellation Group.

“**Third-Party Proceeds**” has the meaning set forth in Section 9.4(a).

“**Transactions**” means the Distribution and any other transactions contemplated by this Agreement or any Ancillary Agreement.

“**Transition Services Agreement**” means the Transition Services Agreement dated as of the date of this Agreement between Exelon and Constellation.

Section 1.2 Interpretation. In this Agreement and the Ancillary Agreements, unless the context clearly indicates otherwise:

- (a) words used in the singular include the plural and words used in the plural include the singular;

- (b) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;
- (c) the word “or” shall have the inclusive meaning represented by the phrase “and/or”;
- (d) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;
- (e) accounting terms used herein shall have the meanings historically ascribed to them by Exelon and its Subsidiaries in their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;
- (f) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (g) reference to any Law means such Law (including any and all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (h) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; a reference to such Person’s “Affiliates” shall be deemed to mean such Person’s Affiliates following the Distribution and any reference to a third party shall be deemed to mean a Person who is not a Party or an Affiliate of a Party;
- (i) if there is any conflict between the provisions of the main body of this Agreement or an Ancillary Agreement and the Exhibits and Schedules hereto or thereto, the provisions of the main body of this Agreement or the Ancillary Agreement, as applicable, shall control unless explicitly stated otherwise in such Exhibit or Schedule; and
- (j) subject to Section 1.5, any portion of this Agreement or any Ancillary Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be.

Section 1.3 Certain Matters Governed Exclusively by Ancillary Agreements. Each of Exelon and Constellation agrees on behalf of itself and the members of its Group that, except as explicitly provided in this Agreement or in any Ancillary Agreement:

- (a) the Tax Matters Agreement shall exclusively govern all matters relating to Taxes between such parties, except to the extent (x) that tax matters relating to employee and employee benefits-related matters are addressed in the Employee Matters Agreement or (y) otherwise expressly provided in the Tax Matters Agreement;
- (b) the Employee Matters Agreement shall exclusively govern the allocation of Assets and Liabilities related to employees and employee compensation and benefits matters with respect to employees and former employees of members of both the Exelon Group and the Constellation Group, except to the extent (x) that employee compensation and benefits-related reimbursements are addressed in the Transition Services Agreement or (y) otherwise expressly provided in the Employee Matters Agreement (it being understood that any such Assets and Liabilities, as allocated pursuant to the Employee Matters Agreement, shall constitute Constellation Assets, Constellation Liabilities, Exelon Assets or Exelon Liabilities, as applicable, for the purposes of Article IX);

(c) the Transition Services Agreement shall exclusively govern all matters relating to the provision of certain services identified therein to be provided by each Party to the other on a transitional basis following the Distribution, except to the extent otherwise expressly provided in the Transition Services Agreement; and

(d) to the extent provided in each of the following agreements, such agreement shall govern the matters arising under that agreement, including any allocation of Liabilities thereunder and the scope and process for indemnification and the resolution of disputes: (x) the Merger Commitments Agreement, (y) the NERC Agreement and (z) the agreements listed in Schedule IX.

Section 1.4 Intercompany and Other Agreements. For the sake of clarity and the avoidance of doubt, this Agreement does not assign, assume, transfer, amend, modify, supplement, replace or terminate any of the agreements listed in Section 2.3(b)(i) through (y) (inclusive). Each of the agreements listed in Section 2.3(b)(i) through (y) (inclusive) shall remain in full force and effect and shall exclusively govern all matters arising under that agreement, including any allocation of Assets and Liabilities thereunder and the scope and process for indemnification and the resolution of disputes.

Section 1.5 Restricted Entities. The Exelon Group includes the Restricted Entities, which are subject to state regulation as public utilities and whose agreements and transactions with related or affiliated parties (including certain Asset transfers, Liability assumptions, and claims releases) are subject to prior regulatory approval. In order to ensure compliance with regulatory requirements and to achieve an expeditious completion of the Distribution and to manage the costs, timing and potential commitments required to achieve the Distribution, which the Parties acknowledge benefits both Parties, Exelon has structured the Transactions to exclude commitments, transfers, assumptions and releases by or on behalf of the Restricted Entities that would require approval by public utility regulatory authorities. To the extent that this Agreement or any Ancillary Agreement imposes an obligation on Exelon in respect of the Restricted Entities by virtue of the inclusion of the Restricted Entities within the Exelon Group, such obligation shall be deemed not to exist to the extent that the entry into, or performance of, such obligation requires prior regulatory approval.

## **ARTICLE II** **TRANSACTIONS**

Section 2.1 Transfers of Assets and Assumptions of Liabilities.

(a) Transfers Prior to Effective Time.

(i) Subject to Section 2.1(b), the Parties shall, and shall cause their respective Group members to, execute such instruments of assignment or transfer, and take such other corporate actions as are necessary to:

(1) assign, transfer or convey to one or more members of the Constellation Group all of the right, title and interest of the Exelon Group in, to and under all Constellation Assets not already owned by the Constellation Group;

(2) assign, transfer or convey to one or more members of the Exelon Group all of the right, title and interest of the Constellation Group in, to and under all Exelon Assets not already owned by the Exelon Group;

(3) cause one or more members of the Constellation Group to assume all of the Constellation Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the Exelon Group; and

(4) cause one or more members of the Exelon Group to assume all of the Exelon Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the Constellation Group.

(ii) Constellation shall cause ExGen to repay, and ExGen shall repay, the aggregate outstanding principal amount and all accrued interest on the Intercompany Loan.

(iii) Exelon shall contribute \$1.75 billion and its entire equity interest in ExGen (including the other Constellation Entities) in exchange for the issuance by Constellation of shares of Constellation Common Stock, which shares shall be lawfully issued, fully paid and non-assessable under the Laws of the Commonwealth of Pennsylvania, and of a sufficient number to effectuate the Distribution.

Notwithstanding anything to the contrary, neither Party shall be required to transfer any information except as required by Article VIII.

(b) Deferred Transfers and Assumptions.

(i) Nothing in this Agreement or in any Ancillary Agreement shall be deemed to require the transfer of any Assets or the assumption of any Liabilities that by their terms or by operation of Law cannot be transferred or assumed.

(ii) To the extent that any transfer of Assets or assumption of Liabilities contemplated by this Agreement or any Ancillary Agreement is not consummated prior to the Effective Time as a result of an absence or non-satisfaction of any required Consent, Governmental Approval or other condition (such Assets or Liabilities, a “*Deferred Asset*” or a “*Deferred Liability*,” as applicable, and, collectively, a “*Deferred Asset or Liability*”), the Parties shall use commercially reasonable efforts to effect such transfers or assumptions as promptly following the Effective Time as practicable. If and when the Consents, Governmental Approvals or other conditions, the absence or non-satisfaction of which gave rise to a Deferred Asset or Liability, are obtained or satisfied, the transfer or assumption of such Deferred Asset or Liability shall be effected in accordance with and subject to the terms of this Agreement or the applicable Ancillary Agreement.

(iii) From and after the Effective Time until such time as a Deferred Asset or Liability is transferred or assumed, as applicable, (A) the Party retaining such Deferred Asset shall thereafter hold such Deferred Asset for the use and benefit of the Party entitled thereto (at the sole expense of the Party entitled thereto) and (B) the Party intended to assume such Deferred Liability shall pay or reimburse the Party retaining such Deferred Liability for all amounts paid or incurred in connection with the retention of such Deferred Liability; it being agreed that the Party retaining such Deferred Asset or Liability shall not be obligated, in connection with the foregoing clause (A) and clause (B), to expend any money unless, at the choice of the Party retaining such Deferred Asset or Liability, the necessary funds are advanced or agreed in writing to be reimbursed by the Party entitled to such Deferred Asset or intended to assume such Deferred Liability. The Party retaining such Deferred Asset or Liability shall use its commercially reasonable efforts to notify in writing the Party entitled to or intended to assume, as applicable, such Deferred Asset or Liability of the need for such expenditure and provide additional supporting details on such expenditure as reasonably requested by the Party entitled to or intended to assume, as applicable, such Deferred Asset or Liability. In addition, the Party retaining such Deferred Asset or Liability shall, insofar as reasonably practicable and to the extent permitted by applicable Law, (x) treat such Deferred Asset or Liability in the ordinary course of business consistent with past practice, (y) promptly take such other actions as may be requested by the Party entitled to such Deferred Asset or by the Party intended to assume such Deferred Liability, at the expense of such Party entitled to such Deferred Asset or by the Party intended to assume such Deferred Liability, in order to place such Party in the same position as if the Deferred Asset or Liability had been transferred or assumed, as applicable, as contemplated hereby, and so that all the benefits and burdens relating to such Deferred Asset or Liability, including possession, use, risk of loss, potential for gain, and control over such Deferred Asset or Liability, are to inure from and after the Effective Time to such Party entitled to such Deferred Asset or intended to assume such Deferred Liability, and (z) hold itself out to third parties as agent or nominee on behalf of the Party entitled to such Deferred Asset or intended to assume such Deferred Liability.

(iv) In furtherance of the foregoing, the Parties agree that, as of the Effective Time, each Party shall be deemed to have acquired beneficial ownership of all of the Assets, together with all rights and privileges incident thereto, and shall be deemed to have assumed all of the Liabilities, and all duties, obligations and responsibilities incident thereto, that such Party is entitled to acquire or intended to assume pursuant to the terms of this Agreement or the applicable Ancillary Agreement.

(v) The Parties agree to treat, for all tax purposes, any Asset or Liability that is not transferred or assumed prior to the Effective Time and which is subject to the provisions of this Section 2.1(b), as (A) owned by the Party to which such Asset was intended to be transferred or by the Party which was intended to assume such Liability, as the case may be, from and after the Effective Time, (B) having not been owned by the Party retaining such Asset or Liability, as the case may be, at any time from and after the Effective Time, and (C) having been held by the Party retaining such Asset or Liability, as the case may be, only as agent or nominee on behalf of the other Party from and after the Effective Time until the date such Asset or Liability, as the case may be, is transferred to or assumed by such other Party. The Parties shall not take any position inconsistent with the foregoing unless otherwise required by applicable Law (in which case, the Parties shall provide indemnification for any Taxes attributable to the Asset or Liability during the period beginning at the Effective Time and ending on the date of the actual transfer).

(c) Misallocated Assets and Liabilities.

(i) In the event that, at any time from and after the Effective Time, either Party discovers that it or another member of its Group is the owner of, receives or otherwise comes to possess or benefit from any Asset (including the receipt of payments made pursuant to Contracts and proceeds from accounts receivable with respect to such Asset) that should have been allocated to, or assumed by, a member of the other Group pursuant to this Agreement or any Ancillary Agreement (except in the case of any deliberate acquisition of Assets from a member of the other Group for value subsequent to the Effective Time), such Party shall promptly notify the other Party and follow the applicable process set forth in clause (iii).

(ii) In the event that, at any time from and after the Effective Time, either Party discovers that it or another member of its Group is liable for any Liability that should have been allocated to a member of the other Group pursuant to this Agreement or any Ancillary Agreement (except in the case of any deliberate assumption of Liabilities from a member of the other Group for value subsequent to the Effective Time), such Party shall promptly notify the other Party and follow the applicable process set forth in clause (iii).

(iii) A notice under clause (i) shall describe the Asset to be transferred, and a notice under clause (ii) shall describe the Liability to be transferred and assumed. Unless the Party receiving such notice shall object to such transfer or assumption within ten (10) Business Days, then the transferring Party shall:

(x) in the case of clause (i), transfer, or cause to be transferred, such Asset to such member of the other Group, and such member of the other Group shall accept such Asset for no further consideration other than that set forth in this Agreement or such Ancillary Agreement, as applicable. Prior to any such transfer, such Asset shall be held in accordance with Section 2.1(b). Any such transfer shall include any after-tax cash receipts in respect of such Asset and reimbursement by the transferee for any after-tax expenses associated with such Asset incurred by the transferor; or

(y) in the case of clause (ii), transfer, or cause to be transferred, such Liability to such member of the other Group, and such member of the other Group shall assume such Liability for no further consideration other than that set forth in this Agreement or such Ancillary Agreement, as applicable. Prior to any such assumption, such Liabilities shall be held in accordance with Section 2.1(b). Any such transfer shall include reimbursement by the transferee for any after-tax expenses associated with such Liability incurred by the transferor.

In the event that the Party receiving such notice shall notify the other Party that it objects to the transfer or assumption, the Parties shall resolve that dispute using the procedures in Article X. Any transfer or assumption that is required as a result of those procedures will be made in accordance with clause (x) or (y), as applicable.

(iv) In the event that a Party or a member of its Group receives a payment belonging to the other Party or a member of the other Party's Group, the recipient of the payment shall promptly remit the payment to the member of the other Party's Group entitled to the payment.

(d) Instruments of Transfer and Assumption. The Parties agree that (i) transfers of Assets that may be required by this Agreement or any Ancillary Agreement shall be effected by delivery by the transferor to the transferee of (A) with respect to those Assets that constitute stock or other equity interests that are certificated, certificates endorsed in blank or evidenced and/or accompanied by stock powers or other instruments of transfer endorsed in blank, against receipt and (B) with respect to all other Assets, such good and sufficient instruments of contribution, conveyance, assignment and transfer, in form and substance reasonably satisfactory to the Parties, as shall be necessary, in each case, to vest in the designated transferee all of the title and ownership interest of the transferor in and to any such Asset, and (ii) the assumptions of Liabilities required by this Agreement or any Ancillary Agreement shall be effected by delivery by the transferee to the transferor of such good and sufficient instruments of assumption, in form and substance reasonably satisfactory to the Parties, as shall be necessary, in each case, for the assumption by the transferee of such Liabilities.

(e) Plan of Reorganization. The Parties agree that this Agreement constitutes a "plan of reorganization" within the meaning of Treasury Regulation Section 1.368-2(g).

(f) Waiver of "Bulk-Sale" Compliance.

(i) Constellation hereby waives compliance by each and every member of the Exelon Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Constellation Assets to any member of the Constellation Group.

(ii) Exelon hereby waives compliance by each and every member of the Constellation Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Exelon Assets to any member of the Exelon Group.

## Section 2.2 Shared Contracts.

(a) The Parties shall, and shall cause the members of their respective Groups to, use their respective reasonable commercial efforts to work together (and, if necessary and desirable, until the earlier of two years after the Distribution Date and such time as the formal division, partial assignment, modification or replication of such Shared Contract is effected, to work with the third party to such Shared Contract) in an effort to divide, partially assign, modify or replicate (in whole or in part) the respective rights and obligations under and in respect of any Shared Contract, such that (i) a member of the Constellation Group is the beneficiary of the rights and is responsible for the obligations related to that portion of such Shared Contract relating to the Constellation Business (the “**Constellation Portion**”), which rights shall be a Constellation Asset and which obligations shall be a Constellation Liability, and (ii) a member of the Exelon Group is the beneficiary of the rights and is responsible for the obligations related to such Shared Contract not relating to the Constellation Business (the “**Exelon Portion**”), which rights shall be a Exelon Asset and which obligations shall be a Exelon Liability. Nothing in this Agreement shall require the division, partial assignment, modification or replication of a Shared Contract unless and until any necessary Consents are obtained or made, as applicable. If the Parties, or their respective Group members, as applicable, are not able to enter into an arrangement to formally divide, partially assign, modify or replicate such Shared Contract prior to the Distribution as contemplated by the previous sentence, then the Parties shall, and shall cause their respective Group members to, cooperate in any reasonable and permissible arrangement to provide that, following the Distribution and until the earlier of two years after the Distribution Date and such time as the formal division, partial assignment, modification or replication of such Shared Contract as contemplated by the previous sentence is effected, a member of the Constellation Group shall receive the interest in the benefits and obligations of the Constellation Portion under such Shared Contract and a member of the Exelon Group shall receive the interest in the benefits and obligations of the Exelon Portion under such Shared Contract, it being understood that no Party shall have Liability to the other Party for the failure of any third party to perform its obligations under any such Shared Contract.

(b) Nothing in this Section 2.2 shall require either Party nor any member of their respective Groups to contribute capital, pay or grant any consideration or concession in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person (other than reasonable out-of-pocket expenses, attorneys’ fees and recording or similar fees, all of which shall be reimbursed by the Party or the member of the Party’s Group entitled to such Asset or intended to assume such Liability, as applicable, as promptly as reasonably practicable). For the avoidance of doubt, reasonable out-of-pocket expenses, and recording or similar fees shall not include any purchase price, license fee or other payment or compensation for the procurement of any asset secured to replace an Asset in the course of a Party’s obligation under Section 2.2(a).

## Section 2.3 Termination of Intercompany Agreements.

(a) Except as set forth in Section 2.3(b), Exelon, on behalf of itself and each of the other members of the Exelon Group, and Constellation, on behalf of itself and each of the other members of the Constellation Group, hereby terminate, effective as of the Effective Time, any and all Intercompany Agreements. No such terminated Intercompany Agreement will be of any further force or effect from and after the Effective Time and all Parties shall be released from all Liabilities thereunder other than the Liability to settle any Intercompany Accounts as provided in Section 2.4. Each Party shall take, or cause to be taken, any and all actions as may be reasonably necessary to effect the foregoing.

(b) The provisions of Section 2.3(a) shall not apply to any of the following agreements, including any agreements, assignments, assumptions, releases, deeds, instruments and undertakings delivered in connection with any such agreement or its implementation (which agreements and any agreements, assignments, assumptions, releases, deeds, instruments and undertakings delivered in connection with any such agreement or its implementation shall continue to be valid, effective and outstanding after the Effective Time and thereafter shall be deemed to be, for each relevant Party (or the member of such Party's Group), an obligation to a third party and shall no longer be an Intercompany Agreement):

(i) this Agreement and the Ancillary Agreements (and each other agreement or instrument expressly contemplated by this Agreement or any Ancillary Agreement);

(ii) the Other Agreements;

(iii) any agreements entered into by Exelon or an Affiliate thereof and Constellation or an Affiliate thereof in the ordinary course of business related to business operations of Subsidiaries thereof, including:

(1) agreements for the delivery, transmission, purchase and sale of natural gas, electricity, capacity, ancillaries, renewable energy certificates (including zero emissions and carbon mitigation credits) and other energy related components and attributes,

(2) agreements or arrangements with alternative retail electric suppliers (including consumption, data interchange, reporting, billing, scheduling and coordination arrangements),

(3) interconnection agreements,

(4) real estate easements, licenses, rights-of-way, leases, subleases, other rights of use, covenants, restrictions, encumbrances and confirmatory deeds,

(5) agreements relating to switchyard access, maintenance and responsibilities and

(6) the Contracts listed on Schedule X (it being understood that such listing is not intended to be exclusive or to define or limit any of the previously listed items); and

(iv) any confidentiality, non-disclosure agreements, litigation management, joint defense agreements or common interest agreements among any members of either Group; and

(v) any transfer, assignment or conveyance agreement relating to Assets, and any assumption, indemnity or similar agreement relating to Liabilities by or among one or more members of the Exelon Group, on the one hand, and one or more members of the Constellation Group, on the other hand.

Section 2.4 Settlement of Intercompany Accounts. Each Intercompany Account (excluding, for the avoidance of doubt, the accounts and arrangements listed in Schedule VI) outstanding immediately prior to the Effective Time, shall be satisfied and/or settled in full in cash or otherwise cancelled and terminated or extinguished by the relevant members of the Exelon Group and the Constellation Group, in each case, on or about February 15, 2022, in the manner agreed to by the Parties.

Section 2.5 Replacement of Guarantees.

(a) Constellation shall use its commercially reasonable efforts to arrange, effective at or prior to the Effective Time, at its cost and expense, the replacement of all Exelon Guarantees with alternate arrangements that do not require any credit support from any member of the Exelon Group; and Constellation shall use its commercially reasonable efforts to obtain from the beneficiaries of such Exelon Guarantees written releases indicating that each applicable member of the Exelon Group shall, effective as of the Effective Time, have no further Liability with respect to such Exelon Guarantees. Exelon shall cooperate with Constellation's efforts to replace such guarantees and obtain such releases.

(b) If, following the Effective Time, Constellation is unable to replace any Exelon Guarantee:

(i) Constellation shall continue to use its commercially reasonable efforts to replace such Exelon Guarantee with alternate arrangements that do not require any credit support from any member of the Exelon Group, and Exelon shall cooperate with Constellation's efforts to replace such guarantees; and

(ii) if a Downgrade Event occurs, then Exelon may request in writing, and Constellation shall cause ExGen to provide, and ExGen shall provide, within ten (10) Business Days of such written request, cash or a letter of credit in an amount to be specified by Exelon in such request (but not to exceed the maximum guaranteed obligation under such guarantee) to provide collateral support for the obligations under such Exelon Guarantee.

(c) Constellation shall indemnify, defend and hold harmless each member of the Exelon Group against, and reimburse each member of the Exelon Group for, any Losses incurred following the Distribution with respect to any Exelon Guarantee, including auditor fees associated with such Exelon Guarantees and the cost of procuring any applicable third party valuations.

(d) In the event that Exelon shall make a payment under an Exelon Guarantee, it shall have the right, but not the obligation, to deduct that payment from any payment otherwise due and owing to Constellation or any member of the Constellation Group under the Tax Matters Agreement.

Section 2.6 Covenant Not to Sue. Each Party hereby covenants and agrees that none of it, the members of such Party's Group or any Person claiming through it shall bring suit or otherwise assert any claim against any Indemnitee, or assert a defense against any claim asserted by any Indemnitee, before any court, arbitrator, mediator or Governmental Authority anywhere in the world, alleging that: (a) the retention or assumption of any Constellation Liabilities by Constellation or a member of the Constellation Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason, (b) the retention or assumption of any Exelon Liabilities by Exelon or a member of the Exelon Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason, (c) the terms and provisions of any Other Agreements, including any indemnification obligations therein, are void or unenforceable for any reason, or (d) the provisions of this Article II or Article IX are void or unenforceable for any reason.

**ARTICLE III**  
**CERTAIN ACTIONS PRIOR TO THE DISTRIBUTION**

Section 3.1 SEC and Other Securities Filings.

(a) Prior to the date of this Agreement, the Parties caused the Registration Statement to be prepared and filed with the SEC and caused it to become effective on December 29, 2021.

(b) As soon as practicable after the date hereof, Exelon shall cause the Information Statement to be mailed to the Record Holders (or notice of internet availability thereof).

(c) The Parties shall cooperate in preparing, filing with the SEC and causing to become effective any other registration statements or amendments or supplements thereto that are necessary or appropriate in order to effect the Transactions, or to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or advisable in connection with such Transactions.

(d) The Parties shall take all such action as may be necessary or appropriate under state and foreign securities or “blue sky” Laws in connection with the Transactions.

(e) Each of Exelon and Constellation shall take all actions as may be necessary to approve any grants of adjusted equity awards by Exelon (in respect of shares of Exelon Common Stock) and Constellation (in respect of shares of Constellation Common Stock) in connection with the Distribution in order to satisfy the requirements of Rule 16b-3 under the Exchange Act.

Section 3.2 NASDAQ Listing Application.

(a) Prior to the date of this Agreement, the Parties (i) caused an application for the listing on NASDAQ of Constellation Common Stock to be issued to the Record Holders in the Distribution (the “**NASDAQ Listing Application**”) to be prepared and filed and (ii) have caused the NASDAQ Listing Application to be approved, subject to official notice of distribution.

(b) Exelon has given NASDAQ notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

Section 3.3 Distribution Agent. At or prior to the Effective Time, Exelon shall, if requested by the Distribution Agent, enter into a distribution agent agreement and/or a paying agent agreement with the Distribution Agent.

Section 3.4 Governmental Approvals and Consents. To the extent that any of the Transactions require any Governmental Approval or Consent that has not been obtained prior to the date of this Agreement, the Parties will use commercially reasonable efforts to obtain, or cause to be obtained, such Governmental Approval or Consent prior to the Effective Time.

Section 3.5 Ancillary Agreements. Prior to the Effective Time, each Party shall execute and deliver, and shall cause each applicable member of its Group to execute and deliver, as applicable, the following agreements (collectively, the “**Ancillary Agreements**”):

- (i) the Tax Matters Agreement,
- (ii) the Transition Services Agreement,
- (iii) the Employee Matters Agreement,
- (iv) the Merger Commitments Agreement,
- (v) the NERC Agreement,
- (vi) the agreements listed on Schedule IX or Schedule XI and

(vii) such other written agreements, documents or instruments as the Parties may agree are reasonably necessary or desirable and which specifically state that they are Ancillary Agreements within the meaning of this Agreement.

For the avoidance of doubt, the Other Agreements and the agreements listed on Schedule XII are not Ancillary Agreements.

Section 3.6 Governance Matters.

(a) Articles of Incorporation and Bylaws. Constellation has adopted the amended and restated articles of incorporation and the amended and restated bylaws of Constellation, each substantially in the form filed by Constellation with the SEC as an exhibit to the Registration Statement, and Constellation shall not take any action to modify its charter or bylaws prior to the Effective Time.

(b) Officers and Directors. On or prior to the Distribution Date, the Parties shall take all necessary action so that, as of the Distribution Date, the officers and directors of Constellation will be as set forth in the Information Statement.

**ARTICLE IV**  
**THE DISTRIBUTION**

Section 4.1 Distribution.

(a) Subject to the terms and conditions set forth in this Agreement, including Section 4.1(b):

(i) on or prior to the Distribution Date, Exelon shall deliver or otherwise make available to the Distribution Agent, for the benefit of holders of record of Exelon Common Stock at the close of business on the Record Date (the "**Record Holders**"), such number of issued and outstanding shares of Constellation Common Stock as is necessary to effect the Distribution; and

(ii) on the Distribution Date, Exelon shall direct the Distribution Agent to distribute, effective as of the Effective Time, to each Record Holder,

(A) one (1) share of Constellation Common Stock for every three (3) shares of Exelon Common Stock held by such Record Holder on the Record Date and

(B) cash, if applicable, in lieu of fractional shares, in an amount determined in accordance with Section 4.1(c).

All such shares of Constellation Common Stock to be so distributed shall be distributed as uncertificated shares registered in book-entry form through the direct registration system. No certificates therefor shall be distributed. Following the Distribution, Exelon shall cause the Distribution Agent to deliver an account statement to each holder of Constellation Common Stock reflecting such holder's ownership thereof. All of the shares of Constellation Common Stock distributed in the Distribution shall be validly issued, fully paid and non-assessable.

(b) Notwithstanding any other provision of this Agreement, Exelon, the Distribution Agent, or any Person that is a withholding agent under applicable Law shall be entitled to deduct and withhold from any consideration distributable or payable hereunder the amounts required to be deducted and withheld under the Code, or any provision of any U.S. federal, state, local or foreign Tax Law, and any such withholding agent is hereby authorized to sell any portion of the consideration otherwise distributable or payable in kind as is necessary to provide sufficient funds to enable the withholding agent to comply with such deduction and withholding requirements. Any amounts so withheld shall be paid over to the appropriate Taxing Authority in the manner prescribed by Law. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Persons in respect of which such deduction and withholding was made.

(c) Notwithstanding anything herein to the contrary, no fractional shares of Constellation Common Stock shall be issued in connection with the Distribution, and any such fractional share interests to which a Record Holder would otherwise be entitled shall not entitle such Record Holder to vote or to any other rights as a shareholder of Constellation. In lieu of any such fractional shares, each Record Holder who, but for the provisions of this section, would be entitled to receive a fractional share interest of Constellation Common Stock pursuant to the Distribution, shall be paid cash, without any interest thereon, as hereinafter provided. Exelon shall direct the Distribution Agent to determine the number of whole shares and fractional shares of Constellation Common Stock allocable to each Record Holder, to aggregate all such fractional shares into whole shares, to sell the whole shares obtained thereby in the open market at the then-prevailing prices on behalf of each Record Holder who otherwise would be entitled to receive fractional share interests and to distribute to each such Record Holder his, her or its ratable share of the total proceeds of such sale, after making appropriate deductions of the amounts required for U.S. federal income tax withholding purposes and after deducting any applicable transfer Taxes and the costs and expenses of such sale and distribution, including brokers fees and commissions. The sales of fractional shares shall occur as soon after the Effective Time as practicable and as determined by the Distribution Agent, but in no case more than three (3) Business Days after the Effective Time. None of Exelon, Constellation or the Distribution Agent shall guarantee any minimum sale price for the fractional shares of Constellation Common Stock. Neither Exelon nor Constellation shall pay any interest on the proceeds from the sale of fractional shares. The Distribution Agent shall have the sole discretion to select the broker-dealers through which to sell the aggregated fractional shares and to determine when, how and at what price to sell such shares. Neither the Distribution Agent nor the broker-dealers through which the aggregated fractional shares are sold shall be Affiliates of Exelon or Constellation.

(d) Any shares of Constellation Common Stock or cash in lieu of fractional shares with respect to Constellation Common Stock that remain unclaimed by any Record Holder one hundred eighty (180) days after the Distribution Date shall be delivered to Constellation, and Constellation, or its transfer agent on its behalf, shall hold such shares of Constellation Common Stock and cash for the account of such Record Holder, and the Parties agree that all obligations to provide such shares of Constellation Common Stock and cash, if any, in lieu of fractional share interests shall be obligations of Constellation, subject to applicable escheat or other abandoned property Laws, and Exelon shall have no Liability with respect thereto.

(e) Until the shares of Constellation Common Stock are duly transferred in accordance with this Section 4.1 and applicable Law, from and after the Effective Time, Constellation shall regard the Persons entitled to receive such shares as record holders of shares of Constellation Common Stock in accordance with the terms of the Distribution without requiring any action on the part of such Persons. Constellation agrees that, subject to any transfers of such shares, from and after the Effective Time, (i) each such holder will be entitled to receive all dividends, if any, payable on, and exercise voting rights and all other rights and privileges with respect to, the shares of Constellation Common Stock then held by such holder, and (ii) each such holder will be entitled, without any action on the part of such holder, to receive evidence of ownership (as determined by Constellation or its transfer agent) of the shares of Constellation Common Stock then held by such holder.

## **ARTICLE V** **CONDITIONS**

Section 5.1 Conditions Precedent to Consummation of the Distribution. The Distribution shall not be effected unless and until the following conditions have been satisfied or waived by Exelon, in its sole and absolute discretion, at or before the Effective Time:

(a) the board of directors of Exelon shall have declared the Distribution, which declaration may be made or withheld in its absolute and sole discretion;

- (b) the Registration Statement shall have been declared effective by the SEC, with no stop order in effect with respect thereto, and no proceedings for such purpose shall be pending before, or threatened by, the SEC;
- (c) Exelon shall have mailed the Information Statement (or notice of internet availability thereof) to the Record Holders;
- (d) Exelon shall have received a private letter ruling from the IRS and an opinion from Sidley Austin LLP, in each case in form and substance satisfactory to Exelon, together substantially to the effect that the Distribution, together with certain related transactions, will qualify as a tax-free reorganization under sections 355 and 368(a)(1)(D) of the Code;
- (e) Exelon shall have received an opinion from Duff & Phelps, LLC, in form and substance satisfactory to Exelon, as to certain solvency matters;
- (f) the NASDAQ Listing Application shall have been approved, subject to official notice of distribution;
- (g) no order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of all or any portion of the Distribution shall be in effect, and no other event shall have occurred or failed to occur that prevents the consummation of all or any portion of the Distribution;
- (h) the transactions described in Article II (other than in respect of Deferred Assets or Deferred Liabilities) shall have been completed, except for such steps as Exelon in its sole discretion shall have determined may be completed after the Distribution Date;
- (i) ExGen shall have entered into the ExGen Credit Facility;
- (j) Exelon shall have completed its own financing transactions contemplated to occur on or prior to the Distribution Date, including amending and restating its existing credit facility;
- (k) no events or developments shall have occurred prior to the Distribution that, in the judgment of the Exelon board of directors, would result in the Distribution having a material adverse effect on Exelon or its shareholders;
- (l) Constellation shall have adopted the amended and restated articles of incorporation and amended and restated bylaws, as provided in Section 3.6(a);
- (m) each of the Ancillary Agreements shall have been executed and delivered by each party thereto and be in full force and effect; and
- (n) any required material Governmental Approvals and other Consents necessary to consummate the Distribution or any portion thereof shall have been obtained and be in full force and effect.

Section 5.2 Right Not to Close. Each of the conditions set forth in Section 5.1 is for the sole benefit of Exelon, and the board of directors of Exelon may, in its sole and absolute discretion, determine whether to waive any condition, in whole or in part. Any determination made by the board of directors of Exelon concerning the satisfaction or waiver of any or all of the conditions set forth in Section 5.1 will be conclusive and binding on the Parties. The satisfaction of the conditions set forth in Section 5.1 will not create any obligation on the part of Exelon to any other Person to effect any of the Transactions or in any way limit Exelon's right to terminate this Agreement and the Ancillary Agreements as set forth in Section 11.1 or alter the consequences of any termination from those specified in Section 11.2.

**ARTICLE VI**  
**NO REPRESENTATIONS OR WARRANTIES**

Section 6.1 Disclaimer of Representations and Warranties. Each Party (on behalf of itself and each other member of its Group) understands and agrees that, except as expressly set forth herein, in any Ancillary Agreement or in any other agreement or document contemplated by this Agreement or any Ancillary Agreement, no Party is representing or warranting in any way as to (a) the assets, businesses or liabilities contributed, transferred, distributed or assumed as contemplated hereby or thereby, (b) any consents or governmental approvals required in connection herewith or therewith, (c) the value or freedom from any security interests of, or any other matter concerning, any assets of any Party, (d) the absence of any defenses or right of setoff or freedom from counterclaim with respect to any action or other asset, including accounts receivable, of any Party, or (e) the legal sufficiency of any contribution, distribution, assignment, document, certificate or instrument delivered hereunder or thereunder to convey title to any asset upon the execution, delivery and filing hereof or thereof.

Section 6.2 As Is, Where Is. Each Party (on behalf of itself and each other member of its Group) understands and agrees that, except as otherwise provided in this Agreement and any Ancillary Agreement, all assets transferred pursuant to this Agreement or any Ancillary Agreement are being transferred “as is, where is” and any transferee shall bear the economic and legal risks that (i) any conveyance will prove to be insufficient to vest in the transferee good and marketable title, free and clear of any security interest, and (ii) any necessary approvals or notifications are not obtained or made or that any requirements of laws or judgments are not complied with.

**ARTICLE VII**  
**CERTAIN COVENANTS AND ADDITIONAL AGREEMENTS**

Section 7.1 Insurance Matters.

(a) Exelon and Constellation shall cooperate in good faith to provide for an orderly transition of insurance coverage from the date hereof through the Effective Time. In no event shall Exelon, any other member of the Exelon Group or any Exelon Indemnitee have any Liability or obligation whatsoever to any member of the Constellation Group or any Constellation Indemnitee in the event that any insurance policy or other contract or policy of insurance shall be terminated or otherwise cease to be in effect for any reason, shall be unavailable or inadequate to cover any Liability of any member of the Constellation Group for any reason whatsoever or shall not be renewed or extended beyond the current expiration date.

(b) From and after the Effective Time, with respect to any losses, damages and Liability incurred by any member of the Constellation Group prior to the Effective Time, or arising out of facts, events or circumstances occurring, prior to the Effective Time, Exelon shall provide Constellation with access to, and Constellation may, upon ten (10) days’ prior written notice to Exelon, make claims under, Exelon’s third-party insurance policies in place immediately prior to the Effective Time and Exelon’s historical third-party policies of insurance, but solely to the extent that such policies provided coverage for Constellation Liabilities or Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time, in each case relating to, arising out of or resulting from the Constellation Business, the Constellation Assets or the Constellation Liabilities; provided that such access to, and the right to make claims under, such insurance policies shall be subject to the terms and conditions of such insurance policies, including any limits on coverage or scope, any deductibles, self-insured retentions, loss reimbursements and other fees and expenses, and any retrospectively rated or other premium adjustments, resulting from such losses, damages or Liability. Any deductible, loss reimbursement, other fee or expense shall be Constellation’s sole responsibility. Constellation’s access shall be subject to the following additional conditions:

(i) Constellation shall report any claim to Exelon, as promptly as practicable, and in any event in sufficient time so that such claim may be made in accordance with Exelon’s claim reporting procedures in effect immediately prior to the Effective Time (or in accordance with any modifications to such procedures after the Effective Time communicated by Exelon to Constellation in writing);

(ii) Constellation may, in its sole discretion, report such claim to the insurers on its and/or Exelon's behalf with a request that the insurers defend and indemnify it and/or Exelon;

(iii) Constellation and the members of the Constellation Group shall indemnify, hold harmless and reimburse Exelon and the members of the Exelon Group for any fees and expenses incurred by Exelon or any members of the Exelon Group to the extent resulting from any access to, any claims made by Constellation or any other members of the Constellation Group under, any insurance provided pursuant to this Section 7.1(b), including any indemnity payments, settlements, judgments, legal fees and allocated claim or loss adjusting expenses and claim handling fees, whether such claims are made by Constellation, its employees or Third Parties; and

(iv) Constellation shall exclusively bear (and neither Exelon nor any members of the Exelon Group shall have any obligation to repay or reimburse Constellation or any member of the Constellation Group for) and shall be liable for all uninsured, uncovered, unavailable or uncollectible amounts of all such claims made by Constellation or any member of the Constellation Group under the policies as provided for in this Section 7.1(b).

In the event that any member of the Exelon Group incurs any losses, damages or Liability prior to or in respect of the period prior to the Effective Time for which such member of the Exelon Group is entitled to coverage under Constellation's third-party insurance policies, the same process pursuant to this Section 7.1(b) shall apply, substituting "Exelon" for "Constellation" and "Constellation" for "Exelon." All Constellation general liability and excess liability third-party insurance policies shall include Exelon as an additional insured to the extent of the policies' limits of liability and with respect to claims resulting from Constellation's operations after the Effective Time. All environmental liability policies in force immediately prior to the Effective Time that are to be assigned to Constellation or its subsidiaries after the Effective Time shall name Exelon as an additional named insured. All Exelon general liability and excess liability policies shall include Constellation as an additional insured to the extent of the policies' limits of liability and with respect to claims resulting from Exelon's operations after the Effective Time.

(c) Except as provided in Section 7.1(b), and under cyber liability insurance, from and after the Effective Time, neither Constellation nor any member of the Constellation Group shall have any rights to or under any of the insurance policies of Exelon or any other member of the Exelon Group. Except for cyber liability insurance, at the Effective Time, Constellation shall have in effect all insurance programs required to comply with Constellation's contractual obligations and such other insurance policies required by Law or as reasonably necessary or appropriate for companies operating a business similar to Constellation's. Such insurance programs may include general liability, excess liability, commercial auto liability, workers' compensation, employer's liability, nuclear operations, product liability, property, employment practices liability, employee dishonesty/crime, directors and officers liability, pollution liability, aviation liability, professional liability and fiduciary liability.

(d) Neither Constellation nor any member of the Constellation Group, in connection with making a claim under any insurance policy of Exelon or any member of the Exelon Group pursuant to this Section 7.1, shall take any action that would be reasonably likely to (i) have an adverse impact on the then-current relationship between Exelon or any member of the Exelon Group, on the one hand, and the applicable insurance company, on the other hand, (ii) result in the applicable insurance company terminating or materially reducing coverage, or materially increasing the amount of any premium owed by Exelon or any member of the Exelon Group under the applicable insurance policy, or (iii) otherwise compromise, jeopardize or interfere with the rights of Exelon or any member of the Exelon Group under the applicable insurance policy.

(e) Except as provided in Section 7.2, Exelon shall retain the exclusive right to control its insurance policies and programs, including the right under the policies or applicable law to settle the policies to which losses or claim expenses are allocated, to exhaust, settle, release, commute, buy-back or otherwise resolve disputes with respect to any of its insurance policies and programs and to amend, modify or waive any rights under any such insurance policies and programs, notwithstanding whether any such policies or programs apply to any Constellation Liabilities and/or claims Constellation has made or could make in the future, and no member of the Constellation Group shall allocate losses or claims or loss adjusting expenses to, or erode, exhaust, settle, release, commute, buy-back or otherwise resolve disputes with Exelon's insurers with respect to any of Exelon's insurance policies and programs, or amend, modify or waive any rights under any such insurance policies and programs. Constellation shall cooperate with Exelon and share such information as is reasonably necessary to permit Exelon to manage and conduct its insurance matters as it deems appropriate. Exelon shall share such information with Constellation as is reasonably necessary to enable Constellation to cooperate with Exelon. Except for directors' and officers' liability and fiduciary liability coverage, neither Exelon nor any of the members of the Exelon Group shall have any obligation to secure extended reporting for any claims under any liability policies of Exelon or any member of the Exelon Group for any acts or omissions by any member of the Constellation Group incurred prior to the Effective Time.

(f) Constellation does hereby, for itself and each other member of the Constellation Group, agree that no member of the Exelon Group shall have any Liability whatsoever as a result of the insurance policies and practices of Exelon and the members of the Exelon Group as in effect at any time, including as a result of the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise.

(g) All payments and reimbursements by Constellation pursuant to this Section 7.1 shall be made within thirty (30) days after Constellation's receipt of an invoice therefor from Exelon. If Exelon incurs costs to enforce Constellation's obligations herein, Constellation shall indemnify and hold harmless Exelon for such enforcement costs, including reasonable attorneys' fees.

(h) This Agreement shall not be considered as a contract of insurance and shall not be construed to waive any right or remedy of any member of the Exelon Group in respect of any insurance policy or any other contract or policy of insurance.

Section 7.2 D&O Policies. On and after the Distribution Date, Exelon shall not, and shall cause the members of the Exelon Group not to, take any action that would limit the coverage of the individuals who acted as directors, officers or employees of Constellation (or members of the Constellation Group) prior to the Distribution Date under any directors and officers liability insurance policies or fiduciary liability insurance policies (collectively, "**D&O Policies**") maintained by the members of the Exelon Group in respect of claims relating to a period prior to the Distribution Date. Exelon shall, and shall cause the members of the Exelon Group to, reasonably cooperate with the individuals who acted as directors, officers or employees of Constellation (or members of the Constellation Group) prior to the Distribution Date in their pursuit of any coverage claims under such D&O Policies which could inure to the benefit of such individuals. Exelon shall, and shall cause members of the Exelon Group to, allow Constellation and its agents and representatives, upon reasonable prior notice and during regular business hours, to examine and make copies of the relevant D&O Policies maintained by Exelon and members of the Exelon Group pursuant to this Section 7.2. Exelon shall provide, and shall cause other members of the Exelon Group to provide, such cooperation as is reasonably requested by Constellation in order for Constellation to have in effect on and after the Distribution Date such new D&O Policies as Constellation deems appropriate with respect to claims relating to a period on or after the Distribution Date.

Section 7.3 Post-Effective Time Conduct. The Parties acknowledge that, after the Effective Time, each Party shall be independent of the other Party, with responsibility for its own actions and inactions and its own Liabilities relating to, arising out of or resulting from the conduct of its business, operations and activities following the Effective Time, except as may otherwise be provided in any Ancillary Agreement, and each Party shall (except as otherwise provided in Article II) use commercially reasonable efforts to prevent such Liabilities from being inappropriately borne by the other Party.

Section 7.4 Use of Marks.

(a) Exelon Names and Marks.

(i) “**Exelon Names and Marks**” means the names and marks set forth on Schedule XIII. Constellation, on behalf of itself and the other members of the Constellation Group, acknowledges that it will have no ongoing claim or rights in or to the Exelon Names and Marks. Except as set forth herein, no member of the Constellation Group shall use or permit their respective Subsidiaries to use any Exelon Names and Marks in the operation of the Constellation Business. Constellation shall use commercially reasonable efforts to change the entity names of each member of the Constellation Group to remove all Exelon Names and Marks, and thereafter use commercially reasonable efforts to remove or cause the removal of all Exelon Names and Marks from (x) all signage or other items utilizing Exelon Names and Marks at or on each of the facilities of each member of the Constellation Group or other Constellation Assets that are visible to consumers or the public and (y) any internal materials, in each case as soon as practical and in any event prior to the fifth anniversary of the Distribution Date. From the Effective Time until the earlier of such removal or the fifth anniversary of the Distribution Date, Exelon grants the Constellation Group a non-exclusive, non-assignable, nonsublicensable license to use the Exelon Names and Marks consistent with this Section 7.4(a), provided that any goods and services offered in connection with the Exelon Names and Marks are of a quality consistent with Exelon’s past practices. Except as expressly provided in this Section 7.4(a), Exelon reserves for itself and its Affiliates all rights in the Exelon Names and Marks, and no other rights therein are granted to any member of the Constellation Group, whether by implication, estoppel or otherwise. All use of the Exelon Names and Marks by any member of the Constellation Group shall inure to the benefit of Exelon and its Affiliates.

(ii) The license granted under this Section 7.4(a) may be terminated by written notice if any member of the Constellation Group or their respective Affiliates is in material breach of any provision hereof that remains uncured for more than thirty (30) calendar days after written notice thereof from Exelon. Upon such termination, no member of the Constellation Group shall use any of the Exelon Names and Marks in commerce or otherwise.

(iii) Notwithstanding anything to the contrary provided in this Section 7.4(a), members of the Constellation Group may use the names and marks set forth on Schedule XIII or variants thereof (A) in a neutral, non-trademark manner to describe the historical relationship of the Constellation Group and Exelon, or (B) to the extent required by Law in legal or business documents already in existence at the Effective Time.

(b) Constellation Marks.

(i) “**Constellation Marks**” means the marks set forth on Schedule XIV. Exelon, on behalf of itself and the other members of the Exelon Group, acknowledges that it will have no ongoing claim or rights in or to the Constellation Marks. Except as set forth herein, no member of the Exelon Group shall use or permit their respective Subsidiaries to use any Constellation Marks in the operation of the Exelon Business. Each member of the Exelon Group shall use commercially reasonable efforts to remove or cause the removal of all Constellation Marks from (x) all signage or other items utilizing Constellation Marks at or on each of the facilities of each member of the Exelon Group or other Exelon Assets that are visible to consumers or the public and (y) any internal materials, in each case as soon as practical and in any event prior to the fifth anniversary of the Distribution Date. From the Effective Time until the earlier of such removal or the fifth anniversary of the Distribution Date, Constellation, on behalf of itself and the other members of the Constellation Group grants the Exelon Group a non-exclusive, non-assignable, non-sublicensable license to use the Constellation Marks consistent with this Section 7.4(b), provided that any goods and services offered in connection with the Constellation Marks are of a quality consistent with Constellation’s past practices. Except as expressly provided in this Section 7.4(b), each member of the Constellation Group reserves for itself and its Affiliates all rights in the Constellation Marks, and no other rights therein are granted to any member of the Exelon Group, whether by implication, estoppel or otherwise. All use of the Constellation Marks by any member of the Exelon Group shall inure to the benefit of Constellation and its Affiliates.

(ii) The license granted under this Section 7.4(b) may be terminated by written notice if any member of the Exelon Group or their respective Affiliates is in material breach of any provision hereof that remains uncured for more than thirty (30) calendar days after written notice thereof from Constellation. Upon such termination, no member of the Exelon Group shall use any of the Constellation Marks in commerce or otherwise.

(iii) Notwithstanding anything to the contrary provided in this Section 7.4(b), Exelon may use certain Constellation Marks or variants thereof (A) in a neutral, non-trademark manner to describe the historical relationship of the Constellation Group and Exelon, or (B) to the extent required by Law in legal or business documents already in existence at the Effective Time.

Section 7.5 Separation Oversight Committee. Each Party shall appoint members of the Separation Oversight Committee as set forth in Exhibit B. Exhibit B sets forth the guiding principles and governance for the Separation Oversight Committee.

Section 7.6 Responding to Regulatory Inquiries. Upon reasonable request from a member of a Group (a “**Requesting Member**”) in connection with its response to an inquiry by a Governmental Authority or a proceeding by or before a Governmental Authority, Constellation, in the case where the Requesting Member is a member of the Exelon Group, or Exelon, in the case where the Requesting Member is a member of the Constellation Group, shall cause the applicable member(s) of its Group (the “**Providing Member**”) to cooperate with such Requesting Member in such response, such cooperation to include (i) the identification and provision of information in the possession of such Providing Member(s) (and, if reasonably requested, using commercially reasonable efforts to seek information from vendors or third parties under contractual audit, inspection or records provisions) that is germane to such inquiry or proceeding, (ii) making available during normal business hours a person from such Providing Member(s) familiar with the information so provided to answer questions regarding the information so provided, including its source, manner of compilation and organization, and other relevant inquiries, and (iii) providing testimony and affidavits from a person or persons having knowledge with respect to activities and information that is germane to such inquiry and proceeding; *provided*, as to all of the foregoing:

(v) information need not be provided or discussed to the extent that it is privileged or its provision or discussion would constitute a violation of Law,

(x) unless otherwise requested, the information shall be provided in electronic form if available in that form,

(y) the Requesting Member shall reimburse the Providing Member(s) for its reasonable out-of-pocket costs incurred in providing the information and

(z) if the information is to be filed or otherwise shared with other parties involved in the inquiry or proceeding, at the request of Constellation, in the case where the Requesting Member is a member of the Exelon Group, or Exelon, in the case where the Requesting Member is a member of the Constellation Group, the Requesting Member shall use commercially reasonable efforts to file or share such information under available confidential treatment procedures.

It is understood that written testimony or affidavits to be provided by a person or persons from a Providing Member under clause (iii) of this Section 7.6 shall be subject to the review and approval of counsel for Constellation or the applicable member of the Constellation Group, in the case where the Requesting Member is a member of the Exelon Group, or Exelon or the applicable member of the Exelon Group, in the case where the Requesting Member is a member of the Constellation Group; such approval in any such case not to be unreasonably withheld, conditioned or delayed.

Section 7.7 Conveyance of Certain Real Property.

(a) The Parties and their respective Affiliates have been in discussions regarding (i) the potential conveyance from ExGen to Commonwealth Edison Company ("**ComEd**") of the land owned by ExGen within fenced ComEd switchyard areas where ComEd switchyard equipment and associated control buildings, if any, are located at ExGen's nuclear generating stations in Illinois known as the "Braidwood Station," "Byron Station," "Dresden Nuclear Power Station," "LaSalle County Nuclear Generating Station" and "Quad Cities Nuclear Generating Station" (collectively, the land within the fenced ComEd switchyard areas at these sites is referred to as the "**ExGen Properties**"), and (ii) the potential conveyance from ComEd to ExGen of ExGen's emergency off-site facility in Mazon, Illinois and of ExGen's emergency off-site facility in Morrison, Illinois (collectively, the "**ComEd Properties**," and together with the ExGen Properties, the "**Properties**"). The potential conveyance of each of the Properties shall be referred to individually as a "**Property Conveyance**," and collectively, as the "**Property Conveyances**."

(b) The Parties shall cause the other members of its Group to cooperate in good faith to effectuate the Property Conveyances (i) as soon as practicable but in no event later than February 1, 2024 (the "**Outside Date**"), as such time period may be reasonably extended by mutual agreement of the Parties including for a reasonable period of time in the event any Consent or Government Approval required to effectuate any Property Conveyance is not obtained by the Outside Date, (ii) in accordance with definitive written agreements as may be necessary to effect the Property Conveyances on terms, conditions, representations, covenants and other provisions usual and customary for transactions similar in nature to the Property Conveyances (the "**Definitive Agreements**"), and (iii) to use commercially reasonable efforts to obtain all Consents and Governmental Approvals required to effectuate the Property Conveyances; provided, however, in the event the Parties determine that a Consent or Governmental Approval cannot be obtained to effectuate a Property Conveyance, then the Parties shall abandon such Property Conveyance in accordance with the terms of the Definitive Agreement regarding such Property Conveyance.

(c) The Parties agree that the Definitive Agreements for each Property Conveyance shall require payment of only nominal consideration.

(d) Exelon shall be responsible for all reasonable and documented costs and expenses incurred by Constellation in connection with the transfer of the ExGen Properties to ComEd. Constellation shall be responsible for all reasonable and documented costs and expenses incurred by Exelon or ComEd in connection with the transfer of the ComEd Properties to ExGen.

Section 7.8 **Decommissioning.** Members of the Constellation Group presently hold, directly or indirectly, an interest in various trusts established to hold funds for the eventual decommissioning of nuclear power generating plants owned by one or more members of the Constellation Group, including trusts established for the decommissioning of such plants that were previously owned or co-owned by ComEd and PECO Energy Corporation, a Pennsylvania corporation (such previously owned or co-owned plants up to ComEd's and PECO Energy Corporation's respective ownership interest at the time being referred to individually as a "**Previously Owned Plant**") and the trusts associated with a Previously Owned Plant being referred to as the "**Related Trusts**"). Constellation shall continue, shall cause each member of the Constellation Group to continue, and shall, as applicable, cause its vendors and any third party entity contracted to perform decommissioning activities, to utilize all funds in a Related Trust in respect of the associated Previously Owned Plant (i) in accordance with the applicable provisions of Law and the associated trust agreement and (ii) in a prudent and reasonable manner under the circumstances at the time, but no less than the manner in which the Constellation Group uses funds from the trusts established for its nuclear generating plants that are not Previously Owned Plants.

## **ARTICLE VIII**

### **ACCESS TO INFORMATION; CONFIDENTIALITY; PRIVILEGE**

Section 8.1 **Agreement for Exchange of Information.**

(a) Subject to Section 8.1(b) and Section 8.8(f), and except as set forth in any Ancillary Agreement, for a period of five (5) years following the Distribution Date (the "**Access Period**"), as soon as reasonably practicable after written request:

(i) Exelon shall afford to any member of the Constellation Group and their authorized accountants, counsel and other designated representatives reasonable access during normal business hours to, or, at the Constellation Group's expense, provide copies of, all books, records, Contracts, instruments, data, documents and other information in the possession or under the control of any member of the Exelon Group immediately following the Distribution Date that relates to any member of the Constellation Group or the Constellation Business, and

(ii) Constellation shall afford to any member of the Exelon Group and their authorized accountants, counsel and other designated representatives reasonable access during normal business hours to, or, at the Exelon Group's expense, provide copies of, all books, records, Contracts, instruments, data, documents and other information in the possession or under the control of any member of the Constellation Group immediately following the Distribution Date that relates to any member of the Exelon Group or the Exelon Business;

provided, however, that in the event that Constellation or Exelon, as applicable, determine that any such provision of or access to any information in response to a request under this Section 8.1(a) would be commercially detrimental in any material respect, violate any Law or agreement or waive any attorney-client privilege, the work product doctrine or other applicable privilege, the Parties shall take all reasonable measures to permit compliance with such request in a manner that avoids any such harm or consequence (including, where appropriate, seeking a protective order); provided, further, that:

(x) if the Parties are unable to reach agreement on reasonable measures to permit compliance with such request, the Party having possession of such information may deny access, subject to the requesting Party's right to dispute such denial under Article X;

(y) to the extent specific information-sharing or knowledge-sharing provisions are contained in any of the Ancillary Agreements, such other provisions (and not this Section 8.1(a)) shall govern; and

(z) the Access Period shall be extended with respect to requests related to any tax audit or proceeding or other third-party litigation or other dispute filed prior to the end of the Access Period until such litigation or dispute is finally resolved.

(b) A request for information under Section 8.1(a) may only be made for one or more of the following purposes: (i) to comply with reporting, disclosure, filing or other requirements imposed on the requesting party (including under applicable securities Laws) by a Governmental Authority having jurisdiction over such requesting party, (ii) for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, claims defense, regulatory filings, litigation or other similar requirements (other than in connection with any action, suit or proceeding in which any member of a Group is adverse to any member of the other Group), (iii) for use in compensation, benefit or welfare plan administration, (iv) reasonable, bona fide business purposes, (v) for the reasons specified in Section 8.1(c) or (vi) to comply with any obligations under this Agreement or any Ancillary Agreement.

(c) Without limiting the generality of Section 8.1(a), until the end of the fiscal year containing the Distribution Date (and for a reasonable period of time thereafter as required for any party to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), Constellation shall use its commercially reasonable efforts to cooperate with any requests from any member of the Exelon Group pursuant to Section 8.1(a) and Exelon shall use its commercially reasonable efforts to cooperate with any requests from any member of the Constellation Group pursuant to Section 8.1(a), in each case, to enable the requesting party to meet its timetable for dissemination of its earnings releases and financial statements and to enable such requesting party's auditors to timely complete their audit of the annual financial statements and review of the quarterly financial statements.

**Section 8.2 Ownership of Information.** Any information owned by any Person that is provided pursuant to Section 8.1(a) shall be deemed to remain the property of the providing Person. Unless specifically set forth herein, nothing contained in this Agreement shall be construed to grant or confer rights of license or otherwise to the requesting Person with respect to any such information.

**Section 8.3 Compensation for Providing Information.** A Person requesting information pursuant to Section 8.1(a) agrees to reimburse the providing Person for the reasonable and documented expenses out-of-pocket, if any, of gathering and copying such information, to the extent that such expenses are incurred for the benefit of the requesting Person.

**Section 8.4 Retention of Records.** To facilitate the exchange of information pursuant to this Article VIII after the Distribution Date, and except as otherwise required or agreed in writing, the Parties agree to use commercially reasonable efforts to retain, or cause to be retained, all information in the possession or control of them or any member of their Group on the Distribution Date for a period ending on the earlier of the fifth anniversary of the Distribution Date and the applicable period specified in such Party's records retention policies and procedures; provided that, if Exelon determines that records in its possession belong to Constellation, Exelon may arrange for the transfer of those records to Constellation by providing written notice to Constellation, and Constellation shall respond to any such notice within ten (10) Business Days that either it shall accept that transfer or it shall permit the destruction of those records (with a non-response within such ten (10) Business Days being deemed an election by Constellation to permit the destruction of the records that are the subject of the notice from Exelon).

Section 8.5 Limitation of Liability. No Person required to provide information under this Article VIII shall have any Liability (a) if any historical information provided pursuant to this Article VIII is found to be inaccurate, in the absence of gross negligence or willful misconduct by such Person, or (b) if any information is lost or destroyed despite using commercially reasonable efforts to comply with the provisions of Section 8.4.

Section 8.6 Production of Witnesses. At all times from and after the Distribution Date, upon reasonable request:

(a) Constellation shall use commercially reasonable efforts to make available, or cause to be made available, to any member of the Exelon Group, the directors, officers, employees and agents of any member of the Constellation Group as witnesses to the extent that the same may reasonably be required by the requesting party (giving consideration to business demands of such directors, officers, employees and agents) in connection with any Action in which the requesting party may from time to time be involved, except in the case of any Action in which any member of the Constellation Group is or may become adverse to any member of the Exelon Group; and

(b) Exelon shall use commercially reasonable efforts to make available, or cause to be made available, to any member of the Constellation Group, the directors, officers, employees and agents of any member of the Exelon Group as witnesses to the extent that the same may reasonably be required by the requesting party (giving consideration to business demands of such directors, officers, employees and agents) in connection with any Action in which the requesting party may from time to time be involved, except in the case of any Action in which any member of the Exelon Group is or may become adverse to any member of the Constellation Group.

Section 8.7 Confidentiality.

(a) Constellation (on behalf of itself and each other member of its Group) and Exelon (on behalf of itself and each other member of its Group) shall hold, and shall cause each of their respective Affiliates to hold, and each of the foregoing shall cause their respective directors, officers, employees, agents, consultants and advisors to hold, in strict confidence, and not disclose or release or use, without the prior written consent of such member of the other Group, for any purpose other than as expressly permitted pursuant to this Agreement or the Ancillary Agreements, any and all Confidential Information concerning any member of the other Group; provided, that each Party and the members of its Group may disclose, or may permit disclosure of, such Confidential Information (other than Confidential Information described in clause (d) and, to the extent inclusive of information covered by clause (d), clause (e), of the definition of Confidential Information that is privileged information covered by Section 8.8)

(i) to other members of their Group and their respective auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such information for purposes of performing services for a member of such Group and who are informed of their obligation to hold such information confidential to the same extent as is applicable to the Parties and in respect of whose failure to comply with such obligations, such Party will be responsible,

- (ii) if it or any of its Affiliates are required or compelled to disclose any such Confidential Information by judicial or administrative process or by other requirements of Law or stock exchange rule,
- (iii) if it or any of its Affiliates are requested by a regulatory body or reliability organization to disclose any such Confidential Information or
- (iv) as necessary in order to permit such Party to prepare and disclose its financial statements, or other disclosures required by Law or applicable stock exchange.

Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made pursuant to the foregoing clause (ii) above, the Party requested to disclose Confidential Information concerning a member of the other Group, shall, to the extent reasonably practicable and not prohibited by Law, promptly notify such member of the other Group of the existence of such request or demand and, to the extent commercially practicable, shall provide such member of the other Group thirty (30) days (or such lesser period as is commercially practicable) to, at such member of the other Group's own expense, seek an appropriate protective order or other remedy, which the Parties shall reasonably cooperate in obtaining. In the event that such appropriate protective order or other remedy is not obtained within a reasonable period of time, the Party that is required to disclose Confidential Information about a member of the other Group shall furnish, or cause to be furnished, only that portion of the Confidential Information that is legally required to be disclosed and shall use commercially reasonable efforts to ensure that confidential treatment is accorded such information.

(b) The Parties shall be deemed to have satisfied their obligations under this Section 8.7 with respect to Confidential Information of any member of the other Group if they exercise the same degree of care (but no less than a reasonable degree of care) as they exercise to preserve confidentiality for their own similar Confidential Information.

(c) Upon the written request of a Party or a member of its Group, the other Party shall take, and shall cause the applicable members of such other Party's Group to take, reasonable steps to promptly (i) deliver to the requesting Person all original copies of Confidential Information (whether written or electronic) concerning the requesting Person or any member of such requesting Person's Group that is in the possession of such other Party or any member of such other Party's Group and (ii) if specifically requested by the requesting Person, destroy any copies of such Confidential Information (including any extracts therefrom), unless (A) such delivery or destruction would violate any Law or regulatory requirement, (B) such Confidential Information constitutes attorney work product created for such Party, or (C) such Confidential Information, including emails, are contained in an archived computer system backup in accordance with bona fide document retention policies or security and disaster recovery procedures; provided, that the other Party shall not be obligated to destroy Confidential Information that is required by or relates to such other Party's business or the business of any member of such other Party's Group. Upon the written request of the requesting Person, the other Party shall, or shall cause another member of its Group to cause, its duly authorized officers to certify in writing to the requesting party that the requirements of the preceding sentence have been satisfied in full.

#### Section 8.8 Privileged Matters.

(a) The Parties recognize that legal and other professional services that have been and will be provided prior to the Distribution (whether by outside counsel, in-house counsel or other legal professionals), relating to the separation of the Exelon Business and the Constellation Business, have been and will be rendered for the collective benefit of each of the members of the Exelon Group and the Constellation Group, and that each of the members of the Exelon Group and the Constellation Group shall be deemed to be the client with respect to such services for the purposes of asserting all privileges which may be asserted under applicable Law in connection therewith. The Parties recognize that legal and other professional services will be provided following the Distribution, which services will be rendered solely for the benefit of the Exelon Group or the Constellation Group, as the case may be.

(b) For legal and professional services that have been and will be provided prior to the Distribution (whether by outside counsel, in-house counsel or other legal professionals) other than those described in Section 8.8(a), the Parties agree as follows:

(i) Exelon shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any privileged information that relates solely to the Exelon Business and not to the operations of the Constellation Business, whether or not the privileged information is in the possession or under the control of any member of the Exelon Group or any member of the Constellation Group. Exelon shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any privileged information that relates solely to any Exelon Assets or Exelon Liabilities and not any Constellation Assets or Constellation Liabilities in connection with any Actions that are now pending or may be asserted in the future, whether or not the privileged information is in the possession or under the control of any member of the Exelon Group or any member of the Constellation Group; and

(ii) Constellation shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any privileged information that relates solely to the operations of the Constellation Business and not to the Exelon Business, whether or not the privileged information is in the possession or under the control of any member of the Constellation Group or any member of the Exelon Group. Constellation shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any privileged information that relates solely to any Constellation Assets or Constellation Liabilities and not any Exelon Assets or Exelon Liabilities in connection with any Actions that are now pending or may be asserted in the future, whether or not the privileged information is in the possession or under the control of any member of the Constellation Group or any member of the Exelon Group.

(c) The Parties agree that they shall have a shared privilege, with equal right to assert or waive, subject to the restrictions in this Section 8.8, with respect to all privileges not allocated pursuant to the terms of Section 8.8(b). Except as provided in Section 8.8(d):

(i) Constellation may not waive, and shall cause each other member of the Constellation Group not to waive, any privilege that could be asserted by a member of the Exelon Group under any applicable Law, and in which a member of the Exelon Group has a shared privilege, without the written consent of Exelon; and

(ii) Exelon may not waive, and shall cause each other member of the Exelon Group not to waive, any privilege that could be asserted by a member of the Constellation Group under any applicable Law, and in which a member of the Constellation Group has a shared privilege, without the written consent of Constellation.

If a dispute arises between or among Constellation and Exelon, or any members of their respective Groups, regarding whether certain information over which one Party seeks to assert privilege is privileged or whether a privilege should be waived to protect or advance the interest of a Party, each Party agrees that it shall endeavor to minimize any prejudice to the rights of such other Party. Each Party agrees that it will not withhold consent to waiver for any purpose except to protect reasonably its own legitimate interests or the legitimate interests of any other member of its Group. During the course of any such dispute: (x) such information shall be treated as privileged information, and (y) the Party that believes that it can assert privilege over such information and that the privilege should not be waived shall be entitled to control the assertion or waiver of all privileges and immunities in connection with any such information until such time as it is finally determined, or the Parties otherwise agree, that such information is not privileged information or that the privilege should be waived.

(d) Notwithstanding the provisions of Section 8.8(a) or (b), to the fullest extent permitted by Law, in the event of any arbitration or litigation between or among the Parties and/or any members of their respective Groups, any Party or any members of the Party's respective Group may waive a privilege that it shares with another Party or any member of the other Group, without obtaining the written consent from the other Party or the other member(s) of a Party's Group that shares the privilege; provided, that such waiver of a shared privilege shall be effective only as to the use of information by the relevant Parties and/or the applicable members of their respective Groups in such arbitration or litigation, and shall not operate as a waiver of the shared privilege with respect to any proceedings, disputes, or other matters involving third parties or with respect to any other Actions. In the event of any such waiver, the Parties and the members of their respective Groups shall take all reasonable measures to ensure the confidentiality of the privileged information that is the subject of such waiver, including, as necessary, making any applications to an arbitral tribunal or court of law, as applicable, to preserve the confidentiality of such information; and any such privileged information shall otherwise be held confidential by the Parties and the members of their respective Groups and shall not be publicly disclosed. For the avoidance of doubt, this Section 8.8(d) provides the only circumstances, and the only conditions, under which a Party or a member of its respective Group may unilaterally waive any shared applicable legal privilege.

(e) Upon receipt by either Party, or by any member of its Group, of any subpoena, discovery or other request that requires the production or disclosure of information that such Party knows is subject to a shared privilege or as to which a member of the other Group has the sole right hereunder to assert or waive a privilege, or if either Party obtains knowledge that any of its or any other member of its Group's current or former directors, officers, agents or employees have received any subpoena, discovery or other requests that requires the production or disclosure of such privileged information, such Party shall promptly notify the other Party in writing of the existence of the request and shall provide the other Party a reasonable opportunity to review the information and to assert any rights it or they may have under this Section 8.8 or otherwise to prevent the production or disclosure of such privileged information.

(f) The access to information being granted pursuant to Section 8.1, the agreement to provide witnesses and individuals pursuant to Section 8.6, and the handling of privileged information between and among the Parties and the members of their respective Groups pursuant to this Agreement relating to periods prior to the Effective Date shall not be deemed a waiver of any privilege that has been or may be asserted under this Agreement, any of the Ancillary Agreements or otherwise, as the Parties intend all such information to be kept confidential and intend to maintain the privileged nature of any privileged information.

(g) In connection with any matter contemplated by Section 8.6 or this Section 8.8, the Parties agree to, and to cause the applicable members of their Group to, use commercially reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

(h) The Parties acknowledge and agree that any costs and fees associated with asserting any privilege shall be borne by the Party requesting that such privilege be asserted.

Section 8.9 Data Separation Principles. Each of the Parties shall observe and implement, and shall cause the members of their respective Groups to observe and implement, the separation and disposition of electronic records and data in accordance with the principles set forth in Schedule XV.

Section 8.10 Financial Information Certifications.

(a) The Parties shall cooperate with each other in such manner as is reasonably necessary to enable the principal executive officer or officers, principal financial officer or officers and controller or controllers of each of the Parties to make the certifications required of them under Sections 302, 404 and 906 of the Sarbanes-Oxley Act of 2002.

(b) In order to enable the principal executive officer and principal financial officer of Exelon to make the certifications required of them under Section 302 of the Sarbanes-Oxley Act of 2002 following the Distribution in respect of (i) the annual report on Form 10-K for the fiscal year ended December 31, 2021 and (ii) the quarterly report on Form 10-Q for the fiscal quarter ending March 31, 2022 (such fiscal year and fiscal quarter being referred to as a “**Reporting Period**”), upon five (5) business days’ (or such shorter period as may elapse between the Effective Time and the due date for such filing) advance written request by Exelon, Constellation shall provide Exelon with certifications from Constellation’s principal executive officer, principal financial officer and controller with respect to such disclosure controls and procedures and the effectiveness thereof and whether there were any changes in the internal controls over financial reporting that have materially affected or are reasonably likely to materially affect the internal control over financial reporting, which certifications shall (x) be with respect to the portion of the applicable Reporting Period on or prior to the Distribution Date (it being understood that no certification need be provided with respect to any period or portion of any period after the Distribution Date) and (y) be in substantially the form attached hereto as Exhibit A, with such changes thereto as Constellation may reasonably determine. Such certifications shall be deemed provided by Constellation (and not by any officer or employee in their individual capacity).

Section 8.11 Policies and Best Practices. Without representation or warranty, Exelon and Constellation shall continue to be permitted to share, on a confidential basis, “best practices” information and materials (such as policies, workflow templates and standard form contracts) until the third anniversary of the Distribution Date.

**ARTICLE IX**  
**MUTUAL RELEASES; INDEMNIFICATION**

Section 9.1 Release of Pre-Distribution Claims.

(a) Except as provided in Section 9.1(c), effective as of the Effective Time, Constellation does hereby, for itself and each other member of the Constellation Group, and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been shareholders, directors, officers, agents or employees of any member of the Constellation Group (in each case, in their respective capacities as such), remise, release and forever discharge (i) Exelon and the members of the Exelon Group, and their respective successors and assigns, (ii) all Persons who at any time prior to the Effective Time have been shareholders, directors, officers, agents or employees of any member of the Exelon Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, and (iii) all Persons who at any time prior to the Effective Time are or have been shareholders, directors, officers, agents or employees of a Constellation Subsidiary and who are not, as of immediately following the Effective Time, directors, officers or employees of Constellation or a member of the Constellation Group, in each case from: (A) all Constellation Liabilities, (B) all Liabilities arising from or in connection with the transactions contemplated by this Agreement and all other activities undertaken to implement the Distribution and (C) all Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the Constellation Business, the Constellation Assets or the Constellation Liabilities.

(b) Except as provided in Section 9.1(c), effective as of the Effective Time, Exelon does hereby, for itself and each other member of the Exelon Group and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been shareholders, directors, officers, agents or employees of any member of the Exelon Group (in each case, in their respective capacities as such), remise, release and forever discharge (i) Constellation and the members of the Constellation Group, and their respective successors and assigns, (ii) all Persons who at any time prior to the Effective Time have been shareholders, directors, officers, agents or employees of any member of the Constellation Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, and (iii) all Persons who at any time prior to the Effective Time are or have been directors, officers, agents or employees of a Constellation Entity and who are not, as of immediately following the Effective Time, directors, officers or employees of Exelon or a member of the Exelon Group, in each case from: (A) all Exelon Liabilities, (B) all Liabilities arising from or in connection with the transactions contemplated by this Agreement and all other activities undertaken to implement the Distribution and (C) all Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the Exelon Business, the Exelon Assets or the Exelon Liabilities.

(c) Nothing contained in Section 9.1(a) or 9.1(b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings that are specified in Section 2.3(b) or the applicable Schedules thereto as not terminating as of the Effective Time, in each case in accordance with its terms. In furtherance of the foregoing, nothing contained in Section 9.1(a) or 9.1(b) shall release any Person from:

(i) any Liability provided in or resulting from any agreement among any members of the Exelon Group or the Constellation Group that is specified in Section 2.3(b) or the applicable Schedules thereto as not terminating as of the Effective Time, or any other Liability specified in Section 2.3(b) as not to terminate as of the Effective Time;

(ii) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of either Group under, this Agreement or any Ancillary Agreement, including with respect to indemnification or contribution pursuant to this Agreement, any Ancillary Agreement or otherwise for claims brought against the Parties by third parties, which Liability shall be governed by the provisions of this Article IX and, if applicable, the appropriate provisions of the Ancillary Agreements;

(iii) any Liability for the sale, lease, sublease, construction or receipt of goods, property or services purchased, obtained or used in the ordinary course of business by a member of one Group from a member of the other Group prior to the Effective Time;

(iv) any accrued and unpaid compensation or expense reimbursement of any employee;

- (v) any terms of any existing employment agreement or arrangements (including any restrictive covenant provisions such as confidentiality, non-solicitation, non-competition and non-disparagement provisions) or restrictive covenants amongst any member of either Group and any of its respective employees, contractors or agents;
- (vi) any Liability in respect of an Other Agreement, including any claims in respect of Liabilities assumed thereunder and any indemnification or contribution responsibilities undertaken thereunder;
- (vii) any Liability the release of which would result in the release of any Person other than a Person released pursuant to this Section 9.1; or
- (viii) any Liability described or listed on Schedule XVI.

(d) In addition, nothing contained in Section 9.1(a) and Section 9.1(b) shall release: (A) Exelon from indemnifying any director, officer or employee of the Constellation Group who was a director, officer or employee of Exelon or any of its Affiliates at or prior to the Distribution, to the extent such director, officer or employee is or becomes a named defendant in any Action with respect to which he or she was entitled to such indemnification from a member of the Exelon Group pursuant to then-existing obligations, it being understood that if the underlying obligation giving rise to such Action is a Constellation Liability, Constellation shall indemnify Exelon for such Liability (including Exelon's costs to indemnify the director, officer or employee) in accordance with the provisions set forth in Article IX; and (B) Constellation from indemnifying any director, officer or employee of the Exelon Group who was a director, officer or employee of Exelon or any of its Affiliates at or prior to the Distribution, to the extent such director, officer or employee is or becomes a named defendant in any Action with respect to which he or she was entitled to such indemnification from a member of the Constellation Group pursuant to then-existing obligations, it being understood that if the underlying obligation giving rise to such Action is a Exelon Liability, Exelon shall indemnify Constellation for such Liability (including Constellation's costs to indemnify the director, officer or employee) in accordance with the provisions set forth in Article IX.

(e) Constellation shall not make, and shall not permit any member of the Constellation Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against Exelon or any other member of the Exelon Group, or any other Person released pursuant to Section 9.1(a), with respect to any Liabilities released pursuant to Section 9.1(a). Exelon shall not make, and shall not permit any other member of the Exelon Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification against Constellation or any other member of the Constellation Group, or any other Person released pursuant to Section 9.1(b), with respect to any Liabilities released pursuant to Section 9.1(b).

(f) At any time at or after the Effective Time, at the request of either Party, the other Party shall cause each member of such Party's respective Group to execute and deliver releases reflecting the provisions of this Section 9.1.

Section 9.2 Indemnification by Constellation. Subject to Section 9.4, Constellation shall indemnify, defend and hold harmless Exelon, each other member of the Exelon Group and each of their respective former and current directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**Exelon Indemnitees**"), from and against any and all Liabilities of the Exelon Indemnitees relating to, arising out of or resulting from any of the following items (without duplication):

- (a) the Constellation Liabilities, including the failure of Constellation or any other member of the Constellation Group or any other Person to pay, perform or otherwise promptly discharge any Constellation Liability in accordance with its terms; and

(b) any breach by Constellation or any other member of the Constellation Group of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate or conflicting indemnification therein (which shall be controlling).

Section 9.3 Indemnification by Exelon. Subject to Section 9.4, Exelon shall indemnify, defend and hold harmless Constellation, each other member of the Constellation Group and each of their respective former and current directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the “**Constellation Indemnitees**”), from and against any and all Liabilities of the Constellation Indemnitees relating to, arising out of or resulting from any of the following items (without duplication):

(a) the Exelon Liabilities, including the failure of Exelon or any other member of the Exelon Group or any other Person to pay, perform or otherwise promptly discharge any Exelon Liability in accordance with its terms; and

(b) any breach by Exelon or any other member of the Exelon Group of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate or conflicting indemnification therein (which shall be controlling).

Section 9.4 Indemnification Obligations Net of Taxes, Insurance Proceeds and Third-Party Proceeds.

(a) The Parties intend that any Liability subject to indemnification or reimbursement pursuant to this Agreement will be net of (i) Insurance Proceeds that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability and (ii) other amounts recovered from any third party (net of any out-of-pocket costs or expenses incurred in, or Taxes as provided in Section 9.4(b) with respect to, the collection thereof) that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability (“**Third-Party Proceeds**”). Accordingly, the amount that either Party (an “**Indemnifying Party**”) is required to pay to any Person entitled to indemnification or reimbursement pursuant to this Agreement (an “**Indemnitee**”) will be reduced by any Insurance Proceeds or Third-Party Proceeds theretofore actually recovered by or on behalf of the Indemnitee from a third party in respect of the related Liability. If an Indemnitee receives a payment required by this Agreement from an Indemnifying Party in respect of any Liability (an “**Indemnity Payment**”) and subsequently receives Insurance Proceeds or Third-Party Proceeds in respect of such Liability, then the Indemnitee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Insurance Proceeds or Third-Party Proceeds that would have been due if such Insurance Proceeds or Third-Party Proceeds had been received, realized or recovered before the Indemnity Payment was made; provided, that for the avoidance of doubt, such amount shall not exceed the amount of the Indemnity Payment.

(b) The Parties intend that any indemnification or reimbursement payment will be net of Taxes. Accordingly, the amount that an Indemnifying Party is required to pay to an Indemnitee will be adjusted to reflect any Tax benefit to the Indemnitee from the underlying Loss and to reflect any Taxes imposed upon the Indemnitee as a result of the receipt of such payment. Such an adjustment will first be made at the time that the Indemnity Payment is made and will further be made, as appropriate, to take into account any change in the liability of the Indemnitee for Taxes that occurs in connection with the final resolution of an audit by a Taxing Authority. For purposes of this Section 9.4(b), the value of any Tax benefit to the Indemnitee from the underlying Loss shall be an amount equal to the product of (a) the amount of any present or future deduction allowed or allowable to the Indemnitee by the Code, or other applicable Law, as a result of such Loss and (b) the highest statutory rate applicable under Section 11 of the Code, or other applicable Law. For all Tax purposes other than for purposes of Section 355(g) of the Code, Exelon and Constellation agree to treat (i) any payment required by this Agreement (other than payments with respect to interest accruing after the Effective Time) as either a contribution by Exelon to Constellation or a distribution by Constellation to Exelon, as the case may be, occurring immediately prior to the Effective Time or as a payment of an assumed or retained Liability, and (ii) any payment of interest as taxable or deductible, as the case may be, to the Party entitled under this Agreement to retain such payment or required under this Agreement to make such payment, in either case except as otherwise required by applicable Law.

(c) The Indemnitee shall use, and shall cause its Affiliates to use, commercially reasonable efforts to recover any Insurance Proceeds to which the Indemnitee is entitled with respect to any Loss, subject to the provisions of Section 7.1 to the extent applicable. The existence of a claim by an Indemnitor for insurance or against a third party in respect of any Indemnifiable Loss shall not, however, delay any payment pursuant to the indemnification provisions contained in this Article IX and otherwise determined to be due and owing by an Indemnifying Party; rather, the Indemnifying Party shall make payment in full of such amount so determined to be due and owing by it against a concurrent written assignment by the Indemnitee to the Indemnifying Party of the portion of the claim of the Indemnitee for such insurance or against such third party equal to the amount of such payment. The Indemnitee shall use and cause its Affiliates to use commercially reasonable efforts to assist the Indemnifying Party in recovering or to recover on behalf of the Indemnifying Party, any Insurance Proceeds to which the Indemnifying Party is entitled with respect to any Indemnifiable Loss as a result of such assignment. The Indemnitee shall make available to the Indemnifying Party and its counsel all employees, books and records, communications, documents, items or matters within its knowledge, possession or control that are necessary, appropriate or reasonably deemed relevant by the Indemnifying Party with respect to the recovery of such Insurance Proceeds; provided, however, that nothing in this sentence shall be deemed to require a Party to make available books and records, communications, documents or items which (i) in such Party's good faith judgment could result in a waiver of any privilege even if the Parties cooperated to protect such privilege as contemplated by this Agreement or (ii) such Party is not permitted to make available because of any Law or any confidentiality obligation to a third party, in which case such Party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction. Unless the Indemnifying Party has made payment in full of any Loss, such Indemnifying Party shall use and cause its Affiliates to use commercially reasonable efforts to recover any Insurance Proceeds to which it or such Affiliate is entitled with respect to any Indemnifiable Loss.

(d) An insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or have any subrogation rights with respect thereto by virtue of the indemnification provisions hereof, it being expressly understood and agreed that no insurer or any other third party shall be entitled to a "wind-fall" (*i.e.*, a benefit to which an insurer or any other third party would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof. Subject to Section 9.11, each member of the Exelon Group and Constellation Group shall use reasonable commercial efforts to seek to collect or recover any Insurance Proceeds and any Third-Party Proceeds to which such Person is entitled in connection with any Liability for which such Person seeks indemnification pursuant to this Article IX; provided, however, that such Person's inability to collect or recover any such Insurance Proceeds or Third-Party Proceeds shall not limit the Indemnifying Party's obligations hereunder.

Section 9.5 Procedures for Indemnification of Third-Party Claims.

(a) If an Indemnitee shall receive notice or otherwise learn of a Third-Party Claim with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to this Agreement or any Ancillary Agreement, such Indemnitee shall give such Indemnifying Party written notice thereof as soon as reasonably practicable, but no later than thirty (30) days after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail and include copies of all notices and documents (including demand letters and motions, pleadings and other court papers) received by the Indemnitee relating to the Third-Party Claim. Notwithstanding the foregoing, the failure of any Indemnitee or other Person to give notice as provided in this Section 9.5(a) shall not relieve the Indemnifying Party from which indemnification hereunder is sought of its obligations under this Article IX, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice in accordance with this Section 9.5(a).

(b) The Indemnifying Party shall have the right, exercisable by written notice to the Indemnitee within thirty (30) days after receipt of notice from an Indemnitee in accordance with Section 9.5(a) (or sooner, if the nature of such Third-Party Claim so requires), to assume and conduct the defense of such Third-Party Claim in accordance with the limits set forth in this Agreement with counsel selected by the Indemnifying Party and approved by the Indemnitee (such approval not to be unreasonably withheld, conditioned or delayed); provided, however, that the Indemnifying Party shall not have the right to control the defense of any Third-Party Claim (i) to the extent such Third-Party Claim seeks criminal penalties or injunctive or other equitable relief (other than any such injunctive or other equitable relief that is solely incidental to the granting of money damages) or (ii) if the Indemnitee has reasonably determined in good faith that the Indemnifying Party controlling such defense will affect the Indemnitee or its Group in a materially adverse manner.

(c) If the Indemnifying Party elects not to assume the defense of a Third-Party Claim (or is not permitted to assume the defense of such Third-Party Claim) in accordance with this Agreement, or fails to notify an Indemnitee of its election as provided in Section 9.5(b), such Indemnitee may defend such Third-Party Claim, and the Indemnifying Party shall be liable for all reasonable costs and expenses paid or incurred in connection with such defense. If the Indemnifying Party elects (and is permitted) to assume the defense of a Third-Party Claim in accordance with the terms of this Agreement, the Indemnitees shall, subject to the terms of this Agreement, cooperate with the Indemnifying Party with respect to the defense of such Third-Party Claim.

(d) If the Indemnifying Party elects (and is permitted) to assume the defense of a Third-Party Claim in accordance with the terms of this Agreement, the Indemnifying Party will not be liable for any additional legal expenses subsequently incurred by the Indemnitee in connection with the defense of the Third-Party Claim; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third-Party Claim, or the nature of such Third-Party Claim changes such that the Indemnifying Party would no longer be entitled to assume the defense of such Third-Party Claim pursuant to Section 9.5(b), the Indemnitee may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnifying Party or the Indemnitee, as the case may be, shall have the right to participate in (but, subject to the prior sentence, not control), at its own expense, the defense of any Third-Party Claim that the other is defending as provided in this Agreement. In the event, however, that such Indemnitee reasonably determines subsequently that representation by counsel to the Indemnifying Party of both such Indemnifying Party and the Indemnitee could reasonably be expected to present such counsel with a conflict of interest, then the Indemnitee may employ separate counsel to represent or defend it in any such action or proceeding and the Indemnifying Party will pay the reasonable fees and expenses of such counsel.

(e) No Indemnifying Party shall consent to entry of any judgment or enter into any settlement of any Third-Party Claim without the consent of the applicable Indemnitee or Indemnitees; provided, however, that such consent shall not be required if the judgment or settlement: (i) contains no finding or admission of Liability with respect to any such Indemnitee or Indemnitees; (ii) involves only monetary relief which the Indemnifying Party has agreed to pay; (iii) does not involve a Governmental Authority; and (iv) includes a full and unconditional release of the Indemnitee or Indemnitees. Notwithstanding the foregoing, the consent of an Indemnitee (not to be unreasonably withheld, conditioned or delayed) shall be required for any entry of judgment or settlement if the effect thereof is to permit any injunction, declaratory judgment, other order or other non-monetary relief to be entered, directly or indirectly, against such Indemnitee.

(f) Whether or not the Indemnifying Party assumes the defense of a Third-Party Claim, no Indemnitee shall admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

Section 9.6 Additional Matters.

(a) Any claim on account of a Liability that does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnitee to the Indemnifying Party from which indemnification hereunder is sought. Any failure by an Indemnitee to give notice shall not relieve the Indemnifying Party's indemnification obligations under this Agreement, except to the extent that the Indemnifying Party shall have been actually prejudiced by such failure. Such Indemnifying Party shall have a period of sixty (60) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such sixty (60)-day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to make payment. If such Indemnifying Party does not respond within such sixty (60)-day period or rejects such claim in whole or in part, such Indemnitee shall be free to pursue such remedies as may be available to such Party as contemplated by this Agreement.

(b) In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to, and shall stand in the place of, such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other Person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(c) In the event of an Action with respect to which indemnification may be sought hereunder and in which the Indemnifying Party is not a named defendant, if either the Indemnitee or Indemnifying Party shall so request, the Parties shall endeavor to substitute the Indemnifying Party for the named defendant. If such substitution or addition cannot be achieved for any reason or is not requested, the named defendant shall allow the Indemnifying Party to manage the Action as set forth in Section 9.11, and the Indemnifying Party shall fully indemnify the named defendant against all costs of defending the Action (including court costs, sanctions imposed by a court, attorneys' fees, experts fees and all other external expenses), the costs of any judgment or settlement and the cost of any interest or penalties relating to any judgment or settlement.

(d) If (i) a Party incurs any Liability arising out of this Agreement or any Ancillary Agreement; (ii) an adequate legal or equitable remedy is not available for any reason against the other Party to satisfy the Liability incurred by the incurring Party; and (iii) a legal or equitable remedy may be available to the other Party against a third party for such Liability, then the other Party shall use its commercially reasonable efforts to cooperate with the incurring Party, at the incurring Party's expense, to permit the incurring Party to obtain the benefits of such legal or equitable remedy against such third party.

Section 9.7 Right to Contribution.

(a) If any right of indemnification contained in Section 9.2 or Section 9.3 is held unenforceable for any reason, or is insufficient to hold harmless any Indemnitee in respect of any Liability for which such Indemnitee is entitled to indemnification hereunder, then the Indemnifying Party shall contribute to the amounts paid or payable by any Indemnitees as a result of such Liability (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the members of its Group, on the one hand, and such Indemnitee and any other Indemnitees entitled to contribution in respect of such Liability, on the other hand, as well as any other relevant equitable considerations.

(b) Solely for purposes of determining relative fault pursuant to this Section 9.7: (i) any fault associated with the business conducted with Constellation Assets or any fault associated with the Constellation Liabilities (except for the gross negligence or willful misconduct of a member of the Exelon Group) or with the ownership, operation or activities of the Constellation Business prior to the Distribution shall be deemed to be the fault of Constellation and the other members of the Constellation Group, and no such fault shall be deemed to be the fault of Exelon or any other member of the Exelon Group; and (ii) any fault associated with the business conducted with Exelon Assets or any fault associated with the Exelon Liabilities (except for the gross negligence or willful misconduct of a member of the Constellation Group) shall be deemed to be the fault of Exelon and the other members of the Exelon Group, and no such fault shall be deemed to be the fault of Constellation or any other member of the Constellation Group.

Section 9.8 Remedies Cumulative. The remedies provided in this Article IX shall be cumulative and, subject to the provisions of Section 9.10 and Article XI, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

Section 9.9 Survival of Indemnities. The rights and obligations of each of Exelon and Constellation and their respective Indemnitees under this Article IX shall survive the sale or other transfer by any Party or its Affiliates of any Assets or businesses or the assignment by it of any Liabilities.

Section 9.10 Limitation on Liability. Except as may expressly be set forth in this Agreement, none of Exelon, Constellation or any other member of either Group shall in any event have any Liability to the other or to any other member of the other's Group, or to any other Exelon Indemnitee or Constellation Indemnitee, as applicable, under this Agreement

(i) with respect to any matter to the extent that the Party seeking indemnification has engaged in any violation of Law or fraud in connection therewith,

(ii) for any indirect, special, punitive or consequential damages, whether or not caused by or resulting from negligence or breach of obligations hereunder and whether or not informed of the possibility of the existence of such damages, provided, however, that the provisions of this Section 9.10(ii) shall not limit an Indemnifying Party's indemnification obligations hereunder with respect to any Liability any Indemnitee may have to any third party not affiliated with any member of the Exelon Group or the Constellation Group, as applicable, for any indirect, special, punitive or consequential damages, or

(iii) for lost profits, whether direct or consequential.

Notwithstanding the foregoing, nothing in this Section 9.10 shall limit the Liability of Exelon, Constellation or any other member of either Group to the other or to any other member of the other's Group, or to any other Exelon Indemnitee or Constellation Indemnitee, as applicable, with respect to breaches of Section 8.1, Section 8.4 (subject to Section 8.5), Section 8.6 or Section 8.7.

Section 9.11 Management of Actions. This Section 9.11 shall govern the management and direction of pending and future Actions in which members of the Exelon Group or the Constellation Group are named as parties, but shall not alter the allocation of Liabilities set forth in Article II unless otherwise expressly set forth in this Section 9.11.

(a) From and after the Distribution, the Constellation Group shall direct the defense or prosecution of any (i) Actions set forth on Schedule XVII and (ii) other Actions (other than Actions set forth on Schedule XVIII or Schedule XIX) that constitute only Constellation Liabilities or involve only Constellation Assets.

(b) From and after the Distribution, the Exelon Group shall direct the defense or prosecution of any (i) Actions set forth on Schedule XVIII and (ii) other Actions (other than Actions set forth on Schedule XVII or Schedule XIX) that constitute only Exelon Liabilities or involve only Exelon Assets.

(c) From and after the Distribution, the Parties shall separately but cooperatively manage any (i) Actions set forth in Schedule XIX and (ii) other Actions (other than Actions set forth on Schedule XVII or Schedule XVIII) that relate, or may relate, to both an Exelon Asset or Exelon Liability, on the one hand, and a Constellation Asset or a Constellation Liability, on the other hand (such Actions in clauses (i) and (ii), the “*Mixed Actions*”). The Parties shall, as appropriate, cooperate in good faith and take all reasonable actions to provide for any appropriate joinder or change in named parties to such Mixed Actions such that the appropriate member of each Party or Group is party thereto. The Parties shall reasonably cooperate and consult with each other, and to the extent permissible and necessary or advisable, maintain a joint defense in a manner that would preserve for both Parties and their respective Affiliates any attorney-client privilege, joint defense or other privilege with respect to any Mixed Action. Notwithstanding anything to the contrary herein, and except as set forth in Schedule XIX, the Parties may jointly retain counsel (in which case the cost of counsel shall be shared equally by the Parties unless otherwise agreed by the Parties) or retain separate counsel (in which case each Party will bear the cost of its separate counsel) with respect to any Mixed Action; provided that the Parties shall bear their own discovery costs and shall share equally joint litigation costs. In any Mixed Action, each of Exelon and Constellation may pursue separate defenses, claims, counterclaims or settlements to those claims relating to the Exelon Business or the Constellation Business, respectively; provided that each Party shall in good faith make reasonable commercial efforts to avoid adverse effects on the other Party.

(d) To the maximum extent permitted by applicable Law, the rights to recovery of each Party’s Subsidiaries in respect of any past, present or future Action are hereby delegated to such Party. It is the intent of the Parties that the foregoing delegation shall satisfy any Law requiring such delegation to be effected pursuant to a power of attorney or similar instrument. The Parties and their respective Subsidiaries shall execute such further instruments or documents as may be necessary to effect such delegation.

## **ARTICLE X**

### **DISPUTE RESOLUTION**

Section 10.1 Appointed Representative. Each Party shall appoint a representative who shall be responsible for administering the dispute resolution provisions in Section 10.2 (each, an “*Appointed Representative*”). Each Appointed Representative shall have the authority (i) to resolve any Disputes on behalf of the Party appointing such representative and (ii) to designate, and delegate to, one or more individuals the authority to resolve specific Disputes.

Section 10.2 Negotiation and Dispute Resolution.

(a)

(i) Any dispute, controversy or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, enforceability, validity, termination or breach of this Agreement or any Ancillary Agreement or any of the transactions contemplated hereby or thereby between or among the Parties or any members of their respective Groups (each, a “**Dispute**” and, collectively, “**Disputes**”) shall first be referred by either Party or any of the members of their respective Groups for amicable negotiations by a committee (the “**Dispute Committee**”) by providing written notice of such Dispute in the manner provided by Section 12.8 (“**Dispute Notice**”). The Dispute Committee shall consist of six (6) individuals, of which (i) three (3) individuals shall consist of Exelon’s Chief Financial Officer, Exelon’s General Counsel and one (1) individual appointed by Exelon’s General Counsel and (ii) three (3) individuals shall consist of Constellation’s Chief Financial Officer, Constellation’s General Counsel and one (1) individual appointed by Constellation’s General Counsel. The respective General Counsels shall establish any desired meeting schedule and procedures for the Dispute Committee. A Dispute shall be considered resolved by the Dispute Committee if the respective General Counsels concur there is a resolution.

(ii) If, for any reason, a satisfactory resolution of any Dispute is not achieved by the Dispute Committee within thirty (30) days of the date of delivery of the Dispute Notice, such Dispute may be referred by a Party to the Appointed Representatives by providing written notice of such referral in the manner provided in Section 12.8 (“**Dispute Referral Notice**”). All documents, communications and information disclosed in the course of such negotiations involving the Dispute Committee or the Appointed Representatives that are not otherwise independently discoverable shall not be offered or received as evidence or used for impeachment or for any other purpose, but shall be considered as to have been disclosed for settlement purposes.

(b) If, for any reason, a satisfactory resolution of any Dispute is not achieved by the Appointed Representatives within thirty (30) days of the date of delivery of the Dispute Referral Notice, such Dispute may be referred by a Party for final and binding resolution by arbitration administered by the American Arbitration Association (“**AAA**”) under its Commercial Arbitration Rules then in effect (the “**AAA Rules**”), except as modified herein:

(i) The arbitration shall be held in Chicago, Illinois.

(ii) There shall be (A) a sole arbitrator if the amount in dispute, inclusive of all claims and counterclaims, total less than \$10 million or (B) a panel of three arbitrators if the amount in dispute, inclusive of all claims and counterclaims, total \$10 million or more. The panel of three arbitrators shall be chosen as follows: each party shall appoint one arbitrator in the manner provided by the AAA Rules; and the two party-appointed arbitrators shall jointly appoint the third arbitrator, who shall chair the arbitral tribunal. Upon the written request of any party to the Dispute, any arbitrator not timely appointed shall be appointed by the AAA in the manner provided in the AAA Rules. If the arbitration shall be before a sole arbitrator, the sole arbitrator, who shall be independent, shall be appointed by agreement of the parties. If the parties cannot agree on a sole independent arbitrator, then upon written application by either party, the sole arbitrator shall be appointed pursuant to the AAA Rules.

(iii) By electing to proceed under the AAA Rules, the parties to the Dispute confirm that any dispute, claim or controversy concerning the arbitrability of a Dispute, including whether arbitration has been waived, whether an assignee of this Agreement is bound to arbitrate, or as to the interpretation or enforceability of this Section 10.2, shall be determined by the arbitrator(s).

(iv) The parties to the Dispute intend that the arbitrator(s) shall apply the substantive Laws of the State of Delaware to any Dispute hereunder, without regard to any choice of law principles thereof that would mandate the application of the Laws of another jurisdiction. The parties further intend that this agreement to arbitrate shall be valid, enforceable and irrevocable, and any award rendered by the arbitrator(s) shall be final and binding on all the parties to the Dispute. The parties to the Dispute agree to enforcement of or entry of judgment upon such award in any Delaware state or federal court, or in any other court of competent jurisdiction.

(v) By agreeing to arbitration, the parties to the Dispute do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitrator(s) shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitrator's(s') orders to that effect. In any such action, each of the parties to the Dispute irrevocably and unconditionally (i) consents and submits to the jurisdiction and venue of the courts of the State of Delaware and the federal courts of the United States of America located within the State of Delaware (the "**Delaware Courts**"); (ii) waives, to the fullest extent it may effectively do so, any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens or any right of objection to jurisdiction on account of its place of incorporation or domicile, which it may now or hereafter have to the bringing of any such action or proceeding in any Delaware Court; (iii) consents to service of process in the manner provided by Section 12.8 or in any other manner permitted by law; and (iv) **WAIVES ANY RIGHT TO TRIAL BY JURY**.

(vi) The arbitration, and all prior, subsequent or concurrent judicial proceedings related thereto and permitted herein, shall be conducted pursuant to the Federal Arbitration Act, found at Title 9 of the U.S. Code.

(vii) In order to facilitate the comprehensive resolution of related disputes, all claims between any of the parties to the Dispute that arise under or in connection with this Agreement and the Ancillary Agreements may be brought in a single arbitration. Upon the request of any party to an arbitration proceeding constituted under this Agreement or the Ancillary Agreement(s), the arbitrator(s) shall consolidate such arbitration proceeding with any other arbitration proceeding relating to this Agreement and/or the Ancillary Agreement(s), if the arbitral tribunal determines that (i) there are issues of fact or law common to the proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no party to the Dispute would be unduly prejudiced as a result of such consolidation through undue delay or otherwise. In the event of different rulings on this question by the arbitrator(s) constituted hereunder and another arbitrator(s) constituted under this Agreement or the Ancillary Agreement(s), the ruling of the arbitrator(s) constituted first in time shall control, and such arbitrator(s) shall serve as the arbitrator(s) for any consolidated arbitration.

(c) The Parties agree that the provisions of this Section 10.2 bind themselves and any of the members of their respective Groups, and further agree to take all measures lawfully to cause the members of their respective Groups to abide and be bound by the terms of this Section 10.2.

Section 10.3 Conduct During Dispute Resolution Process. Unless otherwise agreed in writing, the Parties shall, and shall cause their respective members of their Group to, continue to honor all commitments under this Agreement and each Ancillary Agreement to the extent required by such agreements during the course of dispute resolution pursuant to the provisions of this Article X, unless such commitments are the specific subject of the Dispute at issue.

## **ARTICLE XI TERMINATION**

Section 11.1 Termination. Upon written notice, this Agreement and each of the Ancillary Agreements may be terminated at any time prior to the Effective Time by and in the sole discretion of Exelon without the approval of Constellation or any other party thereto.

Section 11.2 Effect of Termination. In the event of termination pursuant to Section 11.1, neither Party shall have any Liability of any kind to the other Party as a result of such termination.

## **ARTICLE XII MISCELLANEOUS**

Section 12.1 Further Assurances. Subject to the limitations or other provisions of this Agreement, (a) each Party shall, and shall cause the other members of its Group to, use commercially reasonable efforts (subject to, and in accordance with applicable Law) to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, and to assist and cooperate with the other Party in doing, all things reasonably necessary, proper or advisable to consummate and make effective the Transactions and to carry out the intent and purposes of this Agreement, including using commercially reasonable efforts to obtain satisfaction of the conditions precedent in Article V within its reasonable control and to perform all covenants and agreements herein applicable to such Party or any member of its Group and (b) neither Party shall, nor shall either Party allow any other member of its Group to, without the prior written consent of the other Party, take any action that would reasonably be expected to prevent or materially impede, interfere with or delay any of the Transactions. Without limiting the generality of the foregoing, where the cooperation of third parties, such as insurers or trustees, would be necessary in order for a Party to completely fulfill its obligations under this Agreement, such Party shall use commercially reasonable efforts to cause such third parties to provide such cooperation.

Section 12.2 Payment of Expenses. Except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, all costs and expenses incurred (a) on or prior to the Effective Time in connection with the preparation, execution, delivery and implementation of this Agreement and any Ancillary Agreement, the Registration Statement, the Distribution and the consummation of the transactions contemplated hereby and thereby shall be charged to and paid by Exelon and (b) after the Effective Time shall be borne by the Party or its applicable Subsidiary incurring such costs or expenses.

Section 12.3 Amendments and Waivers.

(a) Subject to Section 11.1, this Agreement may not be amended except by an agreement in writing signed by both Parties.

(b) Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party entitled to the benefit thereof and any such waiver shall be validly and sufficiently given for the purposes of this Agreement if it is in writing signed by an authorized representative of such Party. No delay or failure in exercising any right, power or remedy hereunder shall affect or operate as a waiver thereof; nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or remedy preclude any further exercise thereof or of any other right, power or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that either Party would otherwise have.

Section 12.4 Entire Agreement. This Agreement, the Ancillary Agreements and the Exhibits and Schedules referenced herein and therein and attached hereto or thereto, constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior negotiations, agreements, commitments, writings, courses of dealing and understandings with respect to the subject matter hereof.

Section 12.5 Survival of Agreements. Except as otherwise expressly contemplated by this Agreement, all covenants and agreements of the Parties contained in this Agreement shall survive the Effective Time and remain in full force and effect in accordance with their applicable terms.

Section 12.6 Third-Party Beneficiaries. Except (a) as provided in Article IX relating to Indemnitees and for the release of any Person provided under Section 9.1 and (b) as provided in Section 8.1(a), this Agreement is solely for the benefit of the Parties and should not be deemed to confer upon third parties any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

Section 12.7 Coordination with Other Agreements.

(a) Except as specifically provided herein or in the Tax Matters Agreement, this Agreement shall not apply to Taxes (which are covered by the Tax Matters Agreement). In the case of any conflict between this Agreement and the Tax Matters Agreement in relation to any matter addressed in the Tax Matters Agreement, the Tax Matters Agreement shall prevail.

(b) Except as specifically provided herein or in the Employee Matters Agreement, this Agreement shall not apply to matters that are covered by the Employee Matters Agreement. In the case of any conflict between this Agreement and the Employee Matters Agreement in relation to any matter addressed in the Employee Matters Agreement, the Employee Matters Agreement shall prevail.

Section 12.8 Notices. All notices, requests, permissions, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) five (5) Business Days following sending by registered or certified mail, postage prepaid, (ii) when sent, if sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, (iii) when delivered, if delivered personally to the intended recipient, and (iv) one (1) Business Day following sending by overnight delivery via a national courier service and, in each case, addressed to a Party at the following address for such Party (as updated from time to time by notice in writing to the other Party):

(a) If to Exelon:

Exelon Corporation  
10 South Dearborn Street  
Chicago, Illinois 60603  
Attention: General Counsel  
Email: Gayle.Littleton@exeloncorp.com

(b) If to Constellation:

Constellation Energy Corporation  
1310 Point Street  
Baltimore, Maryland 21231  
Attention: General Counsel  
Email: David.Dardis@constellation.com

Notwithstanding the foregoing, Dispute Notices under Section 10.2(a) may not be delivered by e-mail.

Section 12.9 Counterparts; Electronic Delivery. This Agreement may be executed in multiple counterparts, each of which when executed shall be deemed to be an original, but all of which together shall constitute one and the same agreement. Execution and delivery of this Agreement or any other documents pursuant to this Agreement by facsimile or other electronic means shall be deemed to be, and shall have the same legal effect as, execution by an original signature and delivery in person.

Section 12.10 Severability. If any term or other provision of this Agreement or the Schedules or Exhibits attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to either Party; provided that, if a Party reasonably believes such a material adverse effect has or will occur, that Parties shall negotiate in good faith in an effort to agree upon a suitable and equitable provision to effect the original intent of the Parties associated with such invalid, illegal or unenforceable term or provision. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that the Transactions are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

Section 12.11 Assignability; Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns; provided, however, that the rights and obligations of each Party under this Agreement shall not be assignable, in whole or in part, directly or indirectly, whether by operation of law or otherwise, by such Party without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed) and any attempt to assign any rights or obligations under this Agreement without such consent shall be null and void. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to any of their respective Affiliates, provided that no such assignment shall release such assigning Party from any liability or obligation under this Agreement.

Section 12.12 Governing Law. Except as provided in Section 10.2(b)(vi), this Agreement shall be governed by, and construed and enforced in accordance with, the substantive Laws of the State of Delaware, without regard to any conflicts of law provisions thereof that would result in the application of the Laws of any other jurisdiction.

Section 12.13 Construction. This Agreement shall be construed as if jointly drafted by the Parties and no rule of construction or strict interpretation shall be applied against either Party. The Parties are not relying upon any representations or statements made by the other Party regarding this Agreement.

Section 12.14 Performance. Each Party shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary or Affiliate of such Party.

Section 12.15 Title and Headings. Titles and headings to Sections and Articles are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Section 12.16 Schedules and Exhibits. The Schedules and Exhibits attached hereto are incorporated herein by reference and shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers as of the date first set forth above.

EXELON CORPORATION

By: /s/ Christopher Crane

Name: Christopher Crane

Title: President and Chief Executive Officer

CONSTELLATION ENERGY CORPORATION

By: /s/ Joseph Dominguez

Name: Joseph Dominguez

Title: President and Chief Executive Officer

[Separation Agreement]

---

**SCHEDULES**

**to**

**SEPARATION AGREEMENT**

**By and Between**

**EXELON CORPORATION**

**and**

**CONSTELLATION ENERGY CORPORATION**

**Dated**

**January 31, 2022**

---

Schedules

Schedule I	Constellation Entities
Schedule II	Constellation Assets
Schedule III	Constellation Liabilities
Schedule IV	Exelon Retained Assets
Schedule V	Exelon Retained Liabilities
Schedule VI	Intercompany Accounts
Schedule VII	Other Agreements
Schedule VIII	Restricted Entities
Schedule IX	Other Excepted Agreements
Schedule X	Intercompany Agreements
Schedule XI	Ancillary Agreements
Schedule XII	Agreements Not Considered Ancillary Agreements
Schedule XIII	Exelon Names and Marks
Schedule XIV	Constellation Marks
Schedule XV	Data Separation Principles
Schedule XVI	Liabilities Not Released
Schedule XVII	Constellation Managed Actions
Schedule XVIII	Exelon Managed Actions
Schedule XIX	Jointly Managed Actions

## Constellation Entities

Name	Entity Type	Jurisdiction
2014 ESA HoldCo, LLC	Limited Liability Company	Delaware
2014 ESA Project Company, LLC	Limited Liability Company	Delaware
2015 ESA Holdco, LLC	Limited Liability Company	Delaware
2015 ESA Investco, LLC	Limited Liability Company	Delaware
2015 ESA Project Company, LLC	Limited Liability Company	Delaware
A/C Fuels Company	General Partnership	Pennsylvania
AGE Power Holdings, LLC	Limited Liability Company	Delaware
Albany Green Energy, LLC	Limited Liability Company	Georgia
Altierre Corporation	Investment	California
Annova LNG Brownsville A, LLC	Limited Liability Company	Delaware
Annova LNG Common Infrastructure, LLC	Limited Liability Company	Delaware
Annova LNG, LLC	Limited Liability Company	Delaware
Annova LNG, LLC Series A	Limited Liability Company	Delaware
Annova LNG, LLC Series Z	Limited Liability Company	Delaware
APS Constellation, LLC	Limited Liability Company	Delaware
AV Solar Ranch 1, LLC	Limited Liability Company	Delaware
AVSR Holding, LLC	Limited Liability Company	Delaware
Beebe 1B Renewable Energy, LLC	Limited Liability Company	Delaware
Beebe Renewable Energy, LLC	Limited Liability Company	Delaware
Bennett Creek Windfarm, LLC	Limited Liability Company	Idaho
Bethlehem Renewable Energy, LLC	Limited Liability Company	Delaware
BGE Home Products & Services, LLC	Limited Liability Company	Delaware
Bidgely Inc.	Investment	Delaware
Big Top, LLC	Limited Liability Company	Oregon
Blue Breezes II, L.L.C.	Limited Liability Company	Minnesota
Blue Breezes, L.L.C.	Limited Liability Company	Minnesota
Bluestem Wind Energy Holdings, LLC	Limited Liability Company	Delaware
Bluestem Wind Energy Member Holdings, LLC	Limited Liability Company	Delaware
Bluestem Wind Energy Member, LLC	Limited Liability Company	Delaware
Bluestem Wind Energy, LLC	Limited Liability Company	Delaware
Breakerbox, LLC	Limited Liability Company	Pennsylvania
Butter Creek Power, LLC	Limited Liability Company	Oregon
Calvert Cliffs Nuclear Power Plant, LLC	Limited Liability Company	Maryland
Cassia Gulch Wind Park LLC	Limited Liability Company	Idaho
Cassia Wind Farm LLC	Limited Liability Company	Idaho
CD Panther I, Inc.	Corporation	Maryland
CD Panther II, LLC	Limited Liability Company	Delaware
CD Panther Partners, L.P.	Limited Partnership	Delaware

<b>Name</b>	<b>Entity Type</b>	<b>Jurisdiction</b>
CD SEGS V, Inc.	Corporation	Maryland
CD SEGS VI, Inc.	Corporation	Maryland
CE Culm, Inc.	Corporation	Maryland
CE FundingCo, LLC	Limited Liability Company	Delaware
CE Nuclear, LLC	Limited Liability Company	Delaware
CER Generation, LLC	Limited Liability Company	Delaware
CEU Arkoma West, LLC	Limited Liability Company	Delaware
CEU CoLa, LLC	Limited Liability Company	Delaware
CEU East Fort Peck, LLC	Limited Liability Company	Delaware
CEU Fayetteville, LLC	Limited Liability Company	Delaware
CEU Floyd Shale, LLC	Limited Liability Company	Delaware
CEU Holdings, LLC	Limited Liability Company	Delaware
CEU Huntsville, LLC	Limited Liability Company	Delaware
CEU Kingston, LLC	Limited Liability Company	Delaware
CEU Niobrara, LLC	Limited Liability Company	Delaware
CEU Ohio Shale, LLC	Limited Liability Company	Delaware
CEU Paradigm, LLC	Limited Liability Company	Delaware
CEU Pinedale, LLC	Limited Liability Company	Delaware
CEU Plymouth, LLC	Limited Liability Company	Delaware
CEU Simplicity, LLC	Limited Liability Company	Delaware
CEU W&D, LLC	Limited Liability Company	Delaware
Chesapeake HVAC, Inc.	Corporation	Delaware
CII Solarpower I, Inc.	Corporation	Maryland
Clinton Battery Utility, LLC	Limited Liability Company	Delaware
CNE Gas Holdings, LLC	Limited Liability Company	Kentucky
CNEG Holdings, LLC	Limited Liability Company	Delaware
CNEGH Holdings, LLC	Limited Liability Company	Delaware
CoLa Resources LLC	Limited Liability Company	Delaware
Colorado Bend II Power, LLC	Limited Liability Company	Delaware
Colorado Bend Services, LLC	Limited Liability Company	Delaware
Constellation Connect, LLC	Limited Liability Company	Delaware
Constellation EG, LLC	Limited Liability Company	Delaware
Constellation Energy Canada, Inc.	Corporation	Ontario
Constellation Energy Commodities Group Maine, LLC	Limited Liability Company	Delaware
Constellation Energy Corporation	Public Corporation	Pennsylvania
Constellation Energy Gas Choice, LLC	Limited Liability Company	Delaware
Constellation Energy Nuclear Group, LLC	Limited Liability Company	Maryland
Constellation Energy Power Choice, LLC	Limited Liability Company	Delaware
Constellation Energy Resources, LLC	Limited Liability Company	Delaware
Constellation Energy Solutions, LLC	Limited Liability Company	Delaware
Constellation Energy Upstream Holdings, LLC	Limited Liability Company	Delaware
Constellation Generation Development, LLC	Limited Liability Company	Delaware

<b>Name</b>	<b>Entity Type</b>	<b>Jurisdiction</b>
Constellation Generation NY, LLC	Limited Liability Company	New York
Constellation Genesis, LLC	Limited Liability Company	Delaware
Constellation Holdings, LLC	Limited Liability Company	Maryland
Constellation Generation Limited	Private Limited Company	United Kingdom
Constellation LNG, LLC	Limited Liability Company	Delaware
Constellation Mystic Power, LLC	Limited Liability Company	Delaware
Constellation NewEnergy - Gas Division, LLC	Limited Liability Company	Kentucky
Constellation NewEnergy, Inc.	Corporation	Delaware
Constellation Nuclear Power Plants, LLC	Limited Liability Company	Delaware
Constellation Nuclear, LLC	Limited Liability Company	Delaware
Constellation Power Source Generation, LLC	Limited Liability Company	Maryland
Constellation Power, Inc.	Corporation	Maryland
Constellation Solar Horizons, LLC	Limited Liability Company	Delaware
Constellation Solar New Jersey III, LLC	Limited Liability Company	Delaware
Constellation Technology Ventures, LLC	Limited Liability Company	Delaware
Constellation Texas Land Company, LLC	Limited Liability Company	Delaware
Constellation Texas Retail Energy, LLC	Limited Liability Company	Delaware
Constellation Ventures Holdings, LLC	Limited Liability Company	Delaware
Constellation Ventures International Holdings II Limited	Private Limited Company	United Kingdom
Constellation Ventures International Holdings Limited	Private Limited Company	United Kingdom
Constellation VTI, LLC	Limited Liability Company	Delaware
Continental Wind Holding, LLC	Limited Liability Company	Delaware
Continental Wind, LLC	Limited Liability Company	Delaware
COSI Central Wayne, Inc.	Corporation	Maryland
COSI Sunnyside, Inc.	Corporation	Maryland
Cow Branch Wind Power, L.L.C.	Limited Liability Company	Missouri
CP Sunnyside I, Inc.	Corporation	Maryland
CP Windfarm, LLC	Limited Liability Company	Minnesota
CPower Holdings, LLC	Investment	Delaware
CR Clearing, LLC	Limited Liability Company	Missouri
Criterion Power Partners, LLC	Limited Liability Company	Delaware
DE Asset Operations, LLC	Limited Liability Company	Delaware
DemandQ, Inc.	Investment	Delaware
Denver Airport Solar, LLC	Limited Liability Company	Delaware
Distrigas of Massachusetts LLC	Limited Liability Company	Delaware
Enerterch Capital Partners II LP	Limited Partnership	Delaware
Everett LNG LLC	Limited Liability Company	Delaware
Exelon AVSR, LLC	Limited Liability Company	Delaware
Exelon Clearsight, LLC	Limited Liability Company	Delaware
Exelon FitzPatrick, LLC	Limited Liability Company	Delaware
Exelon Framingham, LLC	Limited Liability Company	Delaware
Exelon Fulton, LLC	Limited Liability Company	Delaware

<b>Name</b>	<b>Entity Type</b>	<b>Jurisdiction</b>
Exelon Generation Acquisitions, LLC	Limited Liability Company	Delaware
Exelon Generation Company, LLC	Limited Liability Company	Pennsylvania
Exelon Generation Consolidation, LLC	Limited Liability Company	Illinois
Exelon Generation Finance Company, LLC	Limited Liability Company	Delaware
Exelon Generation Services, LLC	Limited Liability Company	Delaware
Exelon Generation Supply, LLC	Limited Liability Company	Delaware
Exelon Holdings Mideast SPV Ltd.	Private Limited Company	United Arab Emirates
Exelon Mideast for Technical Support Services for Nuclear Power Projects LLC	Limited Liability Company	United Arab Emirates
Exelon New Boston, LLC	Limited Liability Company	Delaware
Exelon New England Holdings, LLC	Limited Liability Company	Delaware
Exelon Nuclear Partners, LLC	Limited Liability Company	Delaware
Exelon Nuclear Security, LLC	Limited Liability Company	Delaware
Exelon PowerLabs, LLC	Limited Liability Company	Pennsylvania
Exelon West Medway, LLC	Limited Liability Company	Delaware
Exelon Wind 1, LLC	Limited Liability Company	Texas
Exelon Wind 2, LLC	Limited Liability Company	Texas
Exelon Wind 3, LLC	Limited Liability Company	Texas
Exelon Wind Canada Inc.	Corporation	Canada
Exelon Wind, LLC	Limited Liability Company	Delaware
Exelon Wyman, LLC	Limited Liability Company	Delaware
ExGen Energy, S. de R.L. de C.V.	Limited Liability Company	Mexico
ExGen Handley Power, LLC	Limited Liability Company	Delaware
ExGen Renewables Holdings II, LLC	Limited Liability Company	Delaware
ExGen Renewables Holdings, LLC	Limited Liability Company	Delaware
ExGen Renewables I Holding, LLC	Limited Liability Company	Delaware
ExGen Renewables I, LLC	Limited Liability Company	Delaware
ExGen Renewables IV Holding, LLC	Limited Liability Company	Delaware
ExGen Renewables IV, LLC	Limited Liability Company	Delaware
ExGen Renewables Partners, LLC	Limited Liability Company	Delaware
ExGen Texas II Power Holdings, LLC	Limited Liability Company	Delaware
ExGen Texas II Power, LLC	Limited Liability Company	Delaware
ExGen Texas Power Services, LLC	Limited Liability Company	Delaware
Fair Wind Power Partners, LLC	Limited Liability Company	Delaware
Fauquier Landfill Gas, L.L.C.	Limited Liability Company	Delaware
Four Corners Windfarm, LLC	Limited Liability Company	Oregon
Four Mile Canyon Windfarm, LLC	Limited Liability Company	Oregon
Fourmile Wind Energy, LLC	Limited Liability Company	Maryland
Grande Prairie Generation, Inc.	Corporation	Alberta
Greensburg Wind Farm, LLC	Limited Liability Company	Delaware
Handsome Lake Energy, LLC	Limited Liability Company	Maryland
Harvest II Windfarm, LLC	Limited Liability Company	Delaware

<b>Name</b>	<b>Entity Type</b>	<b>Jurisdiction</b>
Harvest Windfarm, LLC	Limited Liability Company	Michigan
High Mesa Energy, LLC	Limited Liability Company	Idaho
High Plains Wind Power, LLC	Limited Liability Company	Texas
Hot Springs Windfarm, LLC	Limited Liability Company	Idaho
JExel Nuclear Company	Corporation	Japan
Kevala, Inc.	Corporation	Delaware
Lake Houston Power, LLC	Limited Liability Company	Delaware
LevelTen Energy, Inc.	Investment	Delaware
Loess Hills Wind Farm, LLC	Limited Liability Company	Missouri
Measurabl, Inc.	Investment	Delaware
Michigan Wind 1, LLC	Limited Liability Company	Delaware
Michigan Wind 2, LLC	Limited Liability Company	Delaware
Michigan Wind 3, LLC	Limited Liability Company	Delaware
Minergy LLC	Limited Liability Company	Wisconsin
Mountain Top Wind Power, LLC	Limited Liability Company	Maryland
NET Power, LLC	Limited Liability Company	Delaware
NewEnergy Receivables LLC	Limited Liability Company	Delaware
Nine Mile Point Nuclear Station, LLC	Limited Liability Company	Delaware
North Shore District Energy, LLC	Limited Liability Company	Delaware
Oregon Trail Windfarm, LLC	Limited Liability Company	Oregon
Pacific Canyon Windfarm, LLC	Limited Liability Company	Oregon
Panther Creek Holdings, Inc.	Corporation	Delaware
Panther Creek Partners	General Partnership	Delaware
Pegasus Power Company, Inc.	Corporation	California
Pegasus Power Partners, a California Limited Partnership	Limited Partnership	California
Pepco Building Services Inc.	Corporation	Delaware
Pinedale Energy, LLC	Limited Liability Company	Colorado
Poseidon Interconnect, LLC	Limited Liability Company	Delaware
PosiGen, Inc.	Investment	Delaware
PrecisionHawk, Inc.	Investment	Delaware
QNovo, Inc.	Investment	Delaware
R.E. Ginna Nuclear Power Plant, LLC	Limited Liability Company	Maryland
Renewable Power Generation Holdings, LLC	Limited Liability Company	Delaware
Renewable Power Generation, LLC	Limited Liability Company	Delaware
Rolling Hills Landfill Gas, LLC	Limited Liability Company	Delaware
Rolls-Royce SMR Limited		United Kingdom
Sacramento PV Energy, LLC	Limited Liability Company	Delaware
Sand Ranch Windfarm, LLC	Limited Liability Company	Oregon
Sendero Wind Energy, LLC	Limited Liability Company	Delaware
Shooting Star Wind Project, LLC	Limited Liability Company	Delaware
Simmons & Eastern, LLC	Limited Liability Company	Delaware

<b>Name</b>	<b>Entity Type</b>	<b>Jurisdiction</b>
Sky Valley, LLC	Limited Liability Company	Delaware
Spark Community Investment Company (dba "SparkFund")	Investment	Delaware
Sugar Beet Wind, LLC	Limited Liability Company	Delaware
Sunbeam LeaseCo, LLC	Limited Liability Company	Delaware
Tandem, PV Inc.	Corporation	Delaware
Threemile Canyon Wind I, LLC	Limited Liability Company	Oregon
Titan STC, LLC	Limited Liability Company	Delaware
Tuana Springs Energy, LLC	Limited Liability Company	Idaho
V.G. Investment Holdings, LLC	Limited Liability Company	Delaware
Volta Energy Technologies, LLC	Limited Liability Company	Delaware
Volta SPV CMX, LLC	Limited Liability Company	Delaware
Volta SPV IMS, LLC	Limited Liability Company	Delaware
Volta SPV NSC, LLC	Limited Liability Company	Delaware
Volta SPV NTR, LLC	Limited Liability Company	Delaware
Volta SPV RSL, LLC	Limited Liability Company	Delaware
Vutility, Inc. (*name change from Vutiliti, Inc.)	Corporation	Delaware
W&D Gas Partners, LLC	Limited Liability Company	Delaware
Wagon Trail, LLC	Limited Liability Company	Oregon
Ward Butte Windfarm, LLC	Limited Liability Company	Oregon
West Medway II Holdings, LLC	Limited Liability Company	Delaware
West Medway II, LLC	Limited Liability Company	Delaware
Whitetail Wind Energy, LLC	Limited Liability Company	Delaware
Wildcat Finance, LLC	Limited Liability Company	Delaware
Wildcat Wind LLC	Limited Liability Company	New Mexico
Wind Capital Holdings, LLC	Limited Liability Company	Missouri
Wolf Hollow II Power, LLC	Limited Liability Company	Delaware
Wolf Hollow Services, LLC	Limited Liability Company	Delaware
Altierre Corporation	Corporation	California
Bidgely Inc.	Corporation	Delaware
CPower Holdings, LLC	Limited Liability Company	Delaware
DemandQ Inc.	Corporation	Delaware
LevelTen Energy, Inc.	Corporation	Delaware
Measurabl, Inc.	Corporation	Delaware
PosiGen, Inc.	Corporation	Delaware
PrecisionHawk, Inc.	Corporation	Delaware
QNovo, Inc.	Corporation	Delaware
Spark Community Investment Company (dba "SparkFund")	Corporation	Delaware

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
CONSTELLATION ENERGY CORPORATION**

In compliance with the requirements of the Pennsylvania Business Corporation Law of 1988, as amended (the “*Business Corporation Law*”), the corporation hereby desires to amend and restate its articles of incorporation in their entirety as follows:

**ARTICLE I.**

The name of the corporation is Constellation Energy Corporation (the “*Corporation*”). The Corporation was incorporated under the provisions of the Business Corporation Law on June 15, 2021.

**ARTICLE II.**

The name of the commercial registered office provider and the county of venue of the Corporation’s current registered office is Corporate Creations Network Inc., Erie County, Pennsylvania.

**ARTICLE III.  
PURPOSES**

The purpose or purposes for which the Corporation is incorporated are to engage in, and do any lawful act concerning, any or all lawful business for which corporations may be incorporated under the Business Corporation Law.

**ARTICLE IV.  
CAPITAL STOCK**

The aggregate number of shares which the Corporation shall have authority to issue is 1,100,000,000 shares, divided into 1,000,000,000 shares of Common Stock, without par value (hereinafter called the “*Common Stock*”), and 100,000,000 shares of Preferred Stock, without par value (hereinafter called the “*Preferred Stock*”). The board of directors shall have the full authority permitted by law to determine the voting rights, if any, and designations, preferences, limitations and special rights of any class or any series of any class of the Preferred Stock that may be desired to the extent not determined by the articles.

Except as otherwise specifically provided in any resolutions adopted by the board of directors, shares of Common Stock and shares of any and all classes or series of any class of Preferred Stock shall be in the form of uncertificated shares.

---

The following is a statement of the voting rights, designations, preferences, limitations and special rights granted to or imposed upon the Common Stock and the Preferred Stock:

#### PART 1 - PREFERRED STOCK

Section 411. Vote Required to Increase Class or Series. Except as otherwise provided in the express terms of any series of Preferred Stock, the number of authorized shares of the Preferred Stock or of any series thereof may be increased without a class or series vote or consent of the holders of the outstanding shares of the class or series affected.

#### PART 2 - COMMON STOCK

Section 421. Voting Rights. Except as otherwise provided in the Business Corporation Law and subject to the rights of holders of any series of Preferred Stock, all of the voting power of the shareholders of the Corporation shall be vested in the holders of the Common Stock. At all meetings of the shareholders of the Corporation the holders of Common Stock shall be entitled to one vote for each share of Common Stock held by them, respectively.

Section 422. Dividend and Other Distribution Rights. Whenever full dividends or other distributions on all series of Preferred Stock at the time outstanding having preferential dividend or other distribution rights shall have been paid or declared and set apart for payment or otherwise made, then such dividends (payable in cash or otherwise) or other distributions, as may be determined by the board of directors may be declared and paid or otherwise made on the Common Stock, but only out of funds legally available for the payment of such dividends or other distributions.

Section 423. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Corporation, the assets and funds of the Corporation available for distribution to shareholders, after paying or providing for the payment to the holders of shares of all series of Preferred Stock of the full distributive amounts to which they are respectively entitled pursuant to the terms of such Preferred Stock, shall be divided among and paid to the holders of Common Stock according to their respective shares.

#### PART 3 - GENERAL

Section 431. Preemptive Rights. Except as otherwise provided in the express terms of any class or series of shares, or in any contract, warrant or other instrument issued by the Corporation, no holder of shares of the Corporation shall be entitled, as such, as a matter of right to subscribe for or purchase any part of any issue of shares or other securities of the Corporation, of any class, series or kind whatsoever, and whether issued for cash, property, services, by way of dividends or otherwise.

Section 432. Action without Meeting. Except as otherwise provided in the express terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by the shareholders of the Corporation must be effected at a duly called annual or special meeting of the shareholders of the Corporation and may not be effected by written consent in lieu of a meeting.

Section 433. Special Meeting of Shareholders; Annual Meetings. Except as otherwise provided by law or in the express terms of any class or series of shares, or in any contract, warrant or other instrument issued by the Corporation, no holder of shares of the Corporation shall be entitled, as such, as a matter of right to call a special meeting of the shareholders. A meeting of the shareholders of the Corporation for the election of directors shall be held in each calendar year, commencing with the year 2023, at such time as shall be provided in or fixed pursuant to authority granted by the bylaws.

Section 434. Advance Notice. Advance notice of shareholder nominations for the election of directors and of business to be brought by shareholders before any meeting of the shareholders of the Corporation shall be given in the manner provided in the bylaws.

Section 435. Amendments to Terms of Preferred Stock. If and to the extent provided in the express terms of any series of Preferred Stock, the board of directors may, without the approval of the holders of the outstanding shares of such series or of the holders of any other shares of the Corporation (unless otherwise provided in the express terms of any such other shares), amend these articles of incorporation so as to change any of the terms of such series.

## **ARTICLE V. MANAGEMENT**

The following provisions shall govern the management of the business and affairs of the Corporation and the rights, powers or duties of its security holders, directors, or officers:

Section 501. Effective Date of Article and Amendments Thereto. This article and any subsequent amendments thereto that require governmental approval, if any, shall take effect upon receipt of such governmental approval.

Section 502. Election of Directors. Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock, the board of directors shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Directors designated as Class I directors shall initially serve until the first annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2023, and each director nominee elected to succeed any such Class I director as a Class I director shall hold office for a three-year term and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Directors designated as Class II directors shall initially serve until the second annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2024, and each director nominee elected to succeed any such Class II director as a Class II director shall hold office for a two-year term and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Directors designated as Class III directors shall initially serve until the third annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2025, and each director nominee elected to succeed any such Class III director as a Class III director shall hold office for a one-year term and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Commencing with the fourth annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2026, directors of each class the term of which shall then or thereafter expire shall be elected to hold office for a one-year term and until their respective successors are duly elected and qualified or until their respective earlier death, resignation or removal. Prior to the fourth annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, in case of any increase or decrease, from time to time, in the number of directors (other than directors elected by the holders of any series of Preferred Stock), the number of directors in each class shall be apportioned among the classes as nearly equal as possible. The board of directors is authorized to assign members of the board of directors already in office to Class I, Class II or Class III, with such assignment becoming effective as of the time at which the initial classification of the board of directors becomes effective.

Section 503. Number of Directors. The number of directors of the Corporation constituting the whole board shall not be less than five nor more than 15. Within such limit, the number of directors constituting the whole board shall be fixed solely by resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies on the board of directors, except as otherwise provided in the express terms of any class or series of Preferred Stock with respect to the election of directors upon the occurrence of a default in the payment of dividends or in the performance of another express requirement of the terms of such Preferred Stock.

Section 504. Vacancies. Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock, a vacancy occurring on the board of directors, including, without limitation, a vacancy resulting from an increase in the number of directors or from the failure by shareholders to elect the full authorized number of directors, may only be filled by a majority of the remaining directors or by the sole remaining director in office. In the event of the death, resignation or removal of a director during such director's elected term of office, such director's successor shall serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is duly elected and qualified or earlier death, resignation or removal.

Section 505. Removal of Directors. Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock, any director may be removed from office by the shareholders only with cause by the affirmative vote of the holders of at least a majority of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Cause for removal shall exist only if the director whose removal is proposed has been either declared of unsound mind by an order of a court of competent jurisdiction, convicted of a felony or of an offense punishable by imprisonment for a term of more than one year by a court of competent jurisdiction or deemed liable by a court of competent jurisdiction for gross negligence or willful misconduct in the performance of such director's duties to the Corporation.

Section 506. Straight Voting for Directors. The shareholders of the Corporation shall not have the right to cumulate their votes for the election of directors of the Corporation.

Section 507. Liability of Directors.

(a) A director shall not be personally liable, as such, for monetary damages (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expense of any nature, including, without limitation, attorneys' fees and disbursements) for any action taken, or any failure to take any action before, on or after the date of these articles of incorporation, unless: (i) the director has breached or failed to perform the duties of his or her office under Subchapter B of Chapter 17 of the Business Corporation Law and (ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(b) The provisions of paragraph (a) shall not apply to the responsibility or liability of a director pursuant to any criminal statute or the liability of a director for the payment of taxes pursuant to local, state or federal law.

(c) If the Business Corporation Law is amended to permit a Pennsylvania corporation to provide greater protection from personal liability for its directors than the express terms of this Section 507, this Section 507 shall be construed to provide for such greater protection. No amendment or repeal limiting the protections for directors of this Section 507 shall have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any act on the part of such director occurring prior to the effective date of such amendment or repeal.

Section 508. Conduct of Officers. In lieu of the standards of conduct otherwise provided by law, officers of the Corporation shall be subject to the same standards of conduct, including standards of care and loyalty and rights of justifiable reliance, as shall at the time be applicable to directors of the Corporation. If the Business Corporation Law is amended to permit a Pennsylvania corporation to provide greater protection from personal liability for its officers than the express terms of this Section 508, this Section 508 shall be construed to provide for such greater protection. No amendment or repeal limiting the protections for officers of this Section 508 shall have any effect on the liability or alleged liability of any officer of the Corporation for or with respect to any act on the part of such officer occurring prior to the effective date of such amendment or repeal.

Section 509. Bylaws. Except as otherwise provided in the express terms of any series of the shares of the Corporation, the bylaws and, except as otherwise stated in this Section 509, bylaws made by the board of directors or shareholders may be amended or repealed by the board of directors. The shareholders or the board of directors may adopt new bylaws except that the board of directors may not adopt, amend or repeal bylaws that the Business Corporation Law specifies may be adopted only by shareholders, and the board of directors may not amend or repeal any bylaw adopted by the shareholders that provides that it shall not be amended or repealed by the board of directors. Notwithstanding the foregoing, except as otherwise provided in the express terms of any series of the shares of the Corporation, any adoption of new bylaws, or amendment or repeal of the bylaws, by the shareholders shall require the affirmative vote of at least a majority of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

## **ARTICLE VI. MISCELLANEOUS**

Section 601. Forum for Certain Actions.

(a) Forum. Unless a majority of the board of directors, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), a state court located within the Commonwealth of Pennsylvania (or, if no state court located within the Commonwealth of Pennsylvania has jurisdiction, a federal district court located in the Commonwealth of Pennsylvania), to the fullest extent permitted by law, shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or employee of the Corporation to the Corporation or the Corporation's shareholders, (iii) any action asserting a claim against the Corporation or any of its directors, officers or employees arising pursuant to any provision of the Business Corporation Law or as to which the Business Corporation Law confers jurisdiction on the Pennsylvania Courts of Common Pleas, these articles of incorporation or the bylaws (in each case, as may be amended from time to time) or (iv) any action asserting a claim against the Corporation or any of its directors, officers or employees governed by the internal affairs doctrine, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants. Unless a majority of the board of directors, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the federal district courts of the United States of America, to the fullest extent permitted by law, shall be the sole and exclusive forum for the resolution of any action asserting a cause of action arising under the Securities Act of 1933, as amended.

(b) Personal Jurisdiction. If any action the subject matter of which is within the scope of Section 601(a) is filed in a court other than a court located within the Commonwealth of Pennsylvania (a “**Foreign Action**”) in the name of any shareholder, such shareholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the Commonwealth of Pennsylvania in connection with any action brought in any such court to enforce Section 601(a) (an “**Enforcement Action**”) and (ii) having service of process made upon such shareholder in any such Enforcement Action by service upon such shareholder’s counsel in the Foreign Action as agent for such shareholder.

(c) Notice and Consent. For the avoidance of doubt, any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 601.

Section 602. Headings. The headings of the various sections of these articles of incorporation are for convenience of reference only and shall not affect the interpretation of any of the provisions of these articles.

Section 603. Enforceability. If any provision of these articles of incorporation shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of these articles of incorporation and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

Section 604. Reserved Power of Amendment. In addition to any other vote that may be required by law, applicable stock exchange rule or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least a majority of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, repeal or adopt any provision of these articles of incorporation, except for amendments on matters specified in the Business Corporation Law that do not require shareholder approval. All rights conferred upon shareholders herein are granted subject to this reservation.

\*\*\*\*\*

IN WITNESS WHEREOF, the Corporation has caused these Amended and Restated Articles of Incorporation to be signed by a duly authorized officer of the Corporation on this 31st day of January, 2022.

/s/ Brian J. Buck

By: Brian J. Buck

Its: Assistant Secretary

---

## CONSTELLATION ENERGY CORPORATION

AMENDED AND RESTATED  
BYLAWS

(Effective January 31, 2022)

**ARTICLE I.**  
**Offices and Fiscal Year**

**Section 1.01 Registered Office.** The registered office of Constellation Energy Corporation (the “*corporation*”) shall be in the City of Erie, in the County of Erie, in the Commonwealth of Pennsylvania. The address of the registered office may be changed from time to time by the corporation’s board of directors (the “*board*” or the “*board of directors*”).

**Section 1.02 Other Offices.** The corporation may also have offices at such other places within or without the Commonwealth of Pennsylvania as the board of directors may from time to time appoint or as may be necessary, advisable or appropriate for the business of the corporation.

**Section 1.03 Fiscal Year.** The fiscal year of the corporation shall begin on the first day of January in each year.

**ARTICLE II.**  
**Notice - Waivers - Meetings Generally****Section 2.01 Manner of Giving Notice.**

(a) **General Rule.** Whenever written notice is required to be given to any person under the provisions of the Pennsylvania Business Corporation Law, as amended (the “*PBCL*”), or by the corporation’s amended and restated articles of incorporation (as may be further amended in accordance with their terms, the “*articles*”) or the corporation’s amended and restated bylaws (as may be further amended from time in accordance with their terms, these “*bylaws*”), it may be given to the person either personally or by sending a copy thereof (i) by first class or express mail, postage prepaid, or courier service, charges prepaid, to the postal address appearing on the books of the corporation, or, in the case of directors, supplied by the director to the corporation for the purpose of notice or (ii) by facsimile transmission, e-mail or other electronic communication to the person’s facsimile number or address for e-mail or other electronic communications supplied by that person to the corporation for the purpose of notice. If the notice is sent by mail or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or courier service for delivery to that person. If the notice is sent by facsimile transmission, e-mail or other electronic communication, it shall be deemed to have been given to the person entitled thereto when sent. Notwithstanding the foregoing, written notice of any meeting of shareholders may be sent by any class of mail, postage prepaid, so long as such notice is sent at least 20 calendar days prior to the date of the meeting. A notice of meeting shall specify the day and hour and geographic location, if any, of the meeting and any other information required by any other provision of the PBCL, the articles or these bylaws.

---

(b) Adjourned Shareholder Meetings. When a meeting of shareholders is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the board fixes a new record date for the adjourned meeting or the PBCL requires notice of the business to be transacted and such notice has not previously been given.

**Section 2.02 Notice of Meetings of the Board of Directors**. Notice of a regular meeting of the board of directors need not be given. Notice of every special meeting of the board of directors shall be given to each director (a) by first class mail posted at least five days before the date of the meeting, (b) by courier service or express mail at least 48 hours before the meeting or (c) by telephone, facsimile, e-mail or other electronic communication at least 24 hours before the meeting or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. Every such notice shall state the time and place of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board need be specified in a notice of the meeting.

**Section 2.03 Notice of Meetings of Shareholders**.

(a) General Rule. Notice in record form (as defined below) of every meeting of the shareholders shall be given by, or at the direction of, the corporation's secretary (the "**secretary**") or other authorized person to each shareholder of record entitled to vote at the meeting at least (i) ten days prior to the day named for a meeting that will consider a transaction under Chapter 3 of the PBCL or a fundamental change under chapter 19 of the PBCL or (ii) five days prior to the date of the meeting. If the secretary or other authorized person neglects or refuses to give notice of a meeting, the person or persons calling the meeting may do so. In the case of a special meeting of shareholders, the notice shall specify the general nature of the business to be transacted. For purposes of these bylaws, "**record form**" shall mean inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form. Notwithstanding the foregoing, if the corporation solicits proxies generally with respect to a meeting of its shareholders, the corporation is not required to give notice of the meeting to any shareholder to whom the corporation is not required to send a proxy statement pursuant to the rules of the Securities and Exchange Commission.

(b) Notice of Action by Shareholders on Articles. In the case of a meeting of shareholders that has as one of its purposes adoption, amendment or repeal of the articles, notice in record form shall be given to each shareholder entitled to vote thereon, and the notice shall include the proposed amendment or a summary of the changes to be effected thereby and, if Subchapter D of Chapter 15 (relating to dissenters rights) of the PBCL is applicable, the text of that subchapter.

(c) Notice of Action by Shareholders on Bylaws. In the case of a meeting of shareholders that has as one of its purposes adoption, amendment or repeal of these bylaws, written notice shall be given to each shareholder entitled to vote thereon that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment or repeal of these bylaws. There shall be included in, or enclosed with, the notice a copy of the proposed amendment or a summary of the changes to be effected thereby.

**Section 2.04 Waiver of Notice.**

(a) Written Waiver. Whenever any notice is required to be given under the provisions of the PBCL, the articles or these bylaws, a waiver thereof, which is filed with the secretary in record form signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Waiver by Attendance. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

**Section 2.05 Modification of Proposal Contained in Notice.** Whenever the language of a proposed resolution is included in a written notice of a meeting required to be given under the provisions of the PBCL or the articles or these bylaws, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

**Section 2.06 Exception to Requirement of Notice.**

(a) General Rule. Whenever any notice or communication is required to be given to any person under the provisions of the PBCL or by the articles or these bylaws or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action and communication with that person is then unlawful, the giving of the notice or communication to that person shall not be required.

(b) Shareholders without Forwarding Addresses. Notice or other communications need not be sent to any shareholder with whom the corporation has been unable to communicate for more than 24 consecutive months because communications to the shareholder are returned unclaimed or the shareholder has otherwise failed to provide the corporation with a current address. Whenever the shareholder provides the corporation with a current address, the corporation shall recommence sending notices and other communications to the shareholder in the manner provided by these bylaws.

**Section 2.07 Use of Conference Telephone and Similar Equipment.** Any director may participate in any meeting of the board of directors or a committee thereof, and the board of directors may provide by resolution with respect to a specific meeting of shareholders or with respect to a class of meetings of shareholders that one or more persons may participate in a meeting of the shareholders of the corporation by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 2.07 shall constitute presence in person at the meeting.

**ARTICLE III.**  
**Shareholders**

**Section 3.01 Place of Meeting.** Meetings of the shareholders of the corporation may be held at such place within or without the Commonwealth of Pennsylvania as may be designated by the board of directors, or in the absence of a designation by the board of directors, by the chair of the board or the president and stated in the notice of a meeting. If a meeting of the shareholders is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders, pose questions of the directors, make appropriate motions and comment on the business of the meeting, the meeting need not be held at a particular geographic location.

**Section 3.02 Annual Meeting.** The annual meeting of the shareholders for the election of directors and the transaction of other business, if any, shall be held on such date and time as may be fixed by the board and stated in the notice of meeting. Failure to hold such meeting at the designated time or on the designated date or to elect some or all of the members of the board at such meeting or any adjournment thereof shall not affect otherwise valid corporate acts or work a dissolution of the corporation. If the annual meeting shall not have been called and held within six months after the designated time, any shareholder may call the meeting at any time thereafter.

**Section 3.03 Special Meetings.** Special meetings of the shareholders may be called at any time by resolution of the board of directors, which may fix the date, time and place of the meeting, and shall be called as provided in the terms of the Preferred Stock (as defined in the articles). If the board does not fix the date, time or place, if any, of the meeting, it shall be the duty of the secretary to do so. A date fixed by the secretary shall not be more than 60 calendar days after the date of the action calling the special meeting.

**Section 3.04 Quorum and Adjournment.**

(a) **General Rule.** A meeting of the shareholders of the corporation duly called shall not be organized for the transaction of business unless a quorum is present. Except as otherwise provided in the terms of the Preferred Stock, the presence of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action on the matter. Shares of the corporation owned, directly or indirectly, by it shall not be counted in determining the total number of outstanding shares for quorum purposes at any given time.

(b) **Withdrawal of a Quorum.** The shareholders present at a duly organized meeting can continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) **Adjournments Generally.** Any regular or special meeting of the shareholders, including one at which directors are to be elected, may be adjourned, for such period as the shareholders present and entitled to vote shall direct.

(e) Action in Absence of Quorum. If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise provided in the PBCL, adjourn the meeting to such time and place as they may determine. Notwithstanding the provisions of Section 1756(b) of the PBCL, those shareholders entitled to vote who attend a meeting of shareholders at which directors are to be elected that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in Section 1756 of the PBCL or this Section 3.04, shall not nevertheless constitute a quorum for the purpose of electing directors. Those shareholders entitled to vote who attend a meeting of shareholders that has previously been adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum as fixed in Section 1756 of the PBCL or this Section 3.04, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those shareholders who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

**Section 3.05 Action by Shareholders**. Except as otherwise provided in the PBCL or by the articles or these bylaws, whenever any corporate action is to be taken by vote of the shareholders of the corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon and, if any shareholders are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the shareholders entitled to vote as a class, in each case at a duly organized meeting of shareholders. Except as otherwise provided in the express terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by the shareholders of the corporation must be effected at a duly called annual or special meeting of the shareholders of the corporation and may not be effected by written consent in lieu of a meeting.

### **Section 3.06 Organization**

(a) Presiding Officer and Secretary of Meeting. At every meeting of the shareholders, the chair of the board, or such other director or officer of the corporation designated by the board, will act as the chairperson (the “**presiding officer**”) of the meeting. The secretary or, in the absence of the secretary, an assistant secretary, or, in the absence of both the secretary and assistant secretaries, a person appointed by the presiding officer of the meeting, shall act as secretary of the meeting.

(b) Rules of Conduct. Unless otherwise determined by the board of directors, the presiding officer of the meeting of shareholders will determine the order of business and have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting, to make such rules, regulations or procedures for the conduct of meeting of shareholders and to do all such acts as such presiding officer deems necessary, appropriate or convenient for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the board or prescribed by the presiding officer, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) removal of any shareholder or any other individual who refuses to comply with the meeting rules, regulations or procedures; (iii) the rules, regulations and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in such meeting to shareholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the board of directors or the presiding officer shall permit; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; (vi) limitations on the time allotted to questions or comment by participants; (vii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (viii) the conclusion, recess or adjournment of the meeting, regardless of whether a quorum is present, to a later date and time and at a place, if any, announced at the meeting; (ix) restrictions on the use of audio and video recording devices, cell phones and other electronic devices; (x) rules, regulations and procedures for compliance with any federal, state or local laws or regulations concerning safety, health or security; (xi) procedures (if any) requiring attendees to provide the corporation advance notice of their intent to attend the meeting; and (xii) any guidelines and procedures as the board or the presiding officer may deem appropriate regarding the participation by means of remote communication of shareholders and proxyholders not physically present at a meeting, whether such meeting is to be held at a designated place or solely by means of remote communication. Any action by the presiding officer in adopting rules for, and in conducting, a meeting shall be fair to the shareholders. Unless, and to the extent determined by the board of directors or the presiding officer of the meeting, meetings of shareholders need not be conducted in accordance with rules of parliamentary procedure.

(c) Closing of the Polls. The presiding officer shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

**Section 3.07 Voting Rights of Shareholders**. At all meetings of the shareholders of the corporation the holders of common stock shall be entitled to one vote for each share of common stock held by them, respectively.

**Section 3.08 Voting and Other Action by Proxy**.

(a) General Rule.

(1) Every shareholder entitled to vote at a meeting of shareholders may authorize another person to act for the shareholder by proxy.

(2) The presence of, or vote or other action on behalf of a shareholder at a meeting of shareholders by a proxy of a shareholder shall constitute the presence of, or vote or action by, the shareholder.

(3) Where two or more proxies of a shareholder are present, the corporation shall, unless otherwise expressly provided in the proxy, accept as the vote or other action of all shares represented thereby the vote cast or other action taken by a majority of them and, if a majority of the proxies cannot agree whether the shares represented shall be voted, or upon the manner of voting the shares or taking the other action, the voting of the shares or right to take other action shall be divided equally among those persons.

(b) Form of Proxy. Every proxy shall be in a form approved by the secretary or as otherwise provided by the PBCL.

(c) Revocation. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the corporation or its designated agent in writing or by electronic transmission. An unrevoked proxy shall not be valid after three years from the date of its signature, authentication or transmission unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, notice in record form of the death or incapacity is given to the secretary or its designated agent.

(d) Expenses. The corporation shall pay the reasonable expenses of solicitation of votes or proxies of shareholders by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise.

**Section 3.09 Voting by Fiduciaries and Pledgees**. Shares of the corporation standing in the name of a trustee or other fiduciary and shares held by an assignee for the benefit of creditors or by a receiver may be voted by the trustee, fiduciary, assignee or receiver. A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee, but nothing in this Section 3.09 shall affect the validity of a proxy given to a pledgee or nominee.

**Section 3.10 Voting by Joint Holders of Shares**.

(a) General Rule. Where shares of the corporation are held jointly or as tenants in common by two or more persons, as fiduciaries or otherwise:

(1) if only one or more of such persons is present in person or by proxy, all of the shares standing in the names of such persons shall be deemed to be represented for the purpose of determining a quorum and the corporation shall accept as the vote of all the shares the vote cast by a joint owner or a majority of them; and

(2) if the persons are equally divided upon whether the shares held by them shall be voted or upon the manner of voting the shares, the voting of the shares shall be divided equally among the persons without prejudice to the rights of the joint owners or the beneficial owners thereof among themselves.

(b) Exception. If there has been filed with the secretary a copy, certified by an attorney-at-law to be correct, of the relevant portions of the agreement under which the shares are held or the instrument by which the trust or estate was created or the order of court appointing them or of an order of court directing the voting of the shares, the persons specified as having such voting power in the latest document so filed, and only those persons, shall be entitled to vote the shares but only in accordance therewith.

**Section 3.11 Voting by Corporations**.

(a) Voting by Corporate Shareholders. Any other domestic or foreign corporation for profit or not-for-profit that is a shareholder of the corporation may vote by any of its officers or agents, or by proxy appointed by any officer or agent, unless some other person, by resolution of the board of directors of the other corporation or a provision of its articles or bylaws, a copy of which resolution or provision certified to be correct by one of its officers has been filed with the secretary, is appointed its general or special proxy in which case that person shall be entitled to vote the shares.

(b) Controlled Shares. Shares of the corporation owned, directly or indirectly, by it and controlled, directly or indirectly, by the board of directors of the corporation, as such, shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares for voting purposes at any given time.

### **Section 3.12 Determination of Shareholders of Record.**

(a) Fixing Record Date. The board of directors may fix a time prior to the date of any meeting of shareholders as a record date for the determination of the shareholders entitled to notice of, or to vote at, the meeting, which time, except in the case of an adjourned meeting, shall be not more than 90 calendar days prior to the date of the meeting of shareholders. Only shareholders of record on the date fixed shall be so entitled notwithstanding any transfer of shares on the books of the corporation after any record date fixed as provided in this Section 3.12(a). The board of directors may similarly fix a record date for the determination of shareholders of record for any other purpose. When a determination of shareholders of record has been made as provided in this Section 3.12(a) for purposes of a meeting, the determination shall apply to any adjournment thereof unless the board fixes a new record date for the adjourned meeting.

(b) Determination When Record Date Is Not Fixed. If a record date is not fixed: (i) the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, and (ii) the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

(c) Certification by Nominee. The board of directors may adopt a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of a specified person or persons. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

### **Section 3.13 Voting Lists.**

(a) General Rule. The officer or agent having charge of the transfer books for shares of the corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. This Section 3.13(a) does not require the corporation to include electronic mail addresses or other electronic contact information on the list. The corporation shall not be required to produce or make available to its shareholders a list of shareholders in connection with any meeting of its shareholders for which a judge or judges of election are appointed, but such a list shall be furnished to the judge or judges of election.

(b) Effect of List. Failure to comply with the requirements of this Section 3.13 shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list. The original share register or transfer book, or a duplicate thereof kept in the Commonwealth of Pennsylvania, shall be *prima facie* evidence as to who are the shareholders entitled to examine the list or share register or transfer book or to vote at any meeting of shareholders.

### **Section 3.14 Judges of Election.**

(a) **Appointment.** In advance of any meeting of shareholders of the corporation, the board of directors may appoint judges of election, who need not be shareholders, to act at the meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of the meeting may, and at the request of any shareholder shall, appoint judges of election at the meeting. The number of judges shall be one or three. A person who is a candidate for an office to be filled at the meeting shall not act as a judge.

(b) **Vacancies.** In case any person appointed as a judge fails to appear or fails or refuses to act, the vacancy may be filled by appointment made by the board of directors in advance of the convening of the meeting or at the meeting by the presiding officer thereof.

(c) **Duties.** The judges of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies, receive votes or ballots, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all shareholders. The judges of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three judges of election, the decision, act or certificate of a majority shall be effective in all respects as the decision, act or certificate of all.

(d) **Report.** On request of the presiding officer of the meeting or of any shareholder, the judges shall make a report in writing of any challenge or question or matter determined by them, and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated therein.

**Section 3.15 Minors as Security Holders.** The corporation may treat a minor who holds shares or obligations of the corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments or distributions, to vote or express consent or dissent and to make elections and exercise rights relating to such shares or obligations unless, in the case of payments or distributions on shares, the corporate officer responsible for maintaining the list of shareholders or the transfer agent of the corporation or, in the case of payments or distributions on obligations, the treasurer or paying officer or agent has received written notice that the holder is a minor.

### **Section 3.16 Notice of Shareholder Proposals and Director Nominations.**

(a) **Annual Meetings of Shareholders.** Nominations of persons for election to the board and the proposal of business other than nominations to be considered by the shareholders may be made at an annual meeting of shareholders only: (i) pursuant to the corporation's notice of meeting (or any supplement thereto) with respect to such annual meeting given by or at the direction of the board (or any duly authorized committee thereof), (ii) otherwise properly brought before such annual meeting by or at the direction of the board (or any duly authorized committee thereof) or (iii) by any shareholder of the corporation who (A) is a shareholder of record on the date of the giving of the notice provided for in this Section 3.16 through the date of such annual meeting, (B) is entitled to vote at such annual meeting and (C) complies with the notice procedures set forth in this Section 3.16. For the avoidance of doubt, compliance with the foregoing clause (iii) shall be the exclusive means for a shareholder to make nominations, or to propose any other business (other than a proposal included in the corporation's proxy materials pursuant to and in compliance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "***Exchange Act***")), at an annual meeting of shareholders.

(b) Timing of Notice for Annual Meetings. In addition to any other applicable requirements, for nominations or other business to be properly brought before an annual meeting by a shareholder pursuant to Section 3.16(a)(iii), the shareholder must have given timely notice thereof in proper written form to the secretary, and, in the case of business other than nominations, such business must be a proper matter for shareholder action. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not later than the Close of Business (as defined below) on the ninetieth (90th) day, or earlier than the Close of Business on the one hundred twentieth (120th) day, prior to the first anniversary of the date of the preceding year's annual meeting of shareholders; *provided, however*, that if the date of the annual meeting of shareholders is more than thirty (30) days prior to, or more than sixty (60) days after, the first anniversary of the date of the preceding year's annual meeting or if no annual meeting was held in the preceding year, to be timely, a shareholder's notice must be so received not later than the Close of Business on the later of (i) the ninetieth (90th) day prior to such annual meeting and (ii) the tenth (10th) day following the day on which public disclosure (as defined below) of the date of the meeting is first made by the corporation. For purposes of this Section 3.16(b), the 2022 annual meeting of shareholders shall be deemed to have been held on April 26, 2022. In no event shall the adjournment, recess, postponement or rescheduling of an annual meeting (or the public disclosure thereof) commence a new time period (or extend any time period) for the giving of notice as described above.

(c) Form of Notice. To be in proper written form, the notice of any shareholder giving notice under this Section 3.16 (each, a "**Noticing Party**") must set forth:

(i) as to each person whom such Noticing Party proposes to nominate for election or reelection as a director (each, a "**Proposed Nominee**"), if any:

(A) the name, age, business address and residence address of such Proposed Nominee;

(B) the principal occupation and employment of such Proposed Nominee;

(C) a written questionnaire with respect to the background and qualifications of such Proposed Nominee, completed by such Proposed Nominee in the form required by the corporation (which form such Noticing Party shall request in writing from the secretary prior to submitting notice and which the secretary shall provide to such Noticing Party within ten (10) days after receiving such request);

(D) a written representation and agreement completed by such Proposed Nominee in the form required by the corporation (which form such Noticing Party shall request in writing from the secretary prior to submitting notice and which the secretary shall provide to such Noticing Party within ten (10) days after receiving such request) providing that such Proposed Nominee: (I) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the corporation, will act or vote on any issue or question (a "**Voting Commitment**") that has not been disclosed to the corporation or any Voting Commitment that could limit or interfere with such Proposed Nominee's ability to comply, if elected as a director of the corporation, with such Proposed Nominee's fiduciary duties under applicable law; (II) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the corporation; (III) will, if elected as a director of the corporation, comply with all applicable rules of any securities exchanges upon which the corporation's securities are listed, the articles, these bylaws, all applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality, stock ownership and trading policies and all other guidelines and policies of the corporation generally applicable to directors (which other guidelines and policies will be provided to such Proposed Nominee within five (5) business days after the secretary receives any written request therefor from such Proposed Nominee), and all applicable fiduciary duties under state law; (IV) consents to being named as a nominee in the corporation's proxy statement and form of proxy for the meeting; and (V) intends to serve a full term as a director of the corporation, if elected;

(E) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings, written or oral, during the past three (3) years, and any other material relationships, between or among such Proposed Nominee, on the one hand, and such Noticing Party or any Shareholder Associated Person (as defined below), on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K as if such Noticing Party and any Shareholder Associated Person were the “registrant” for purposes of such rule and the Proposed Nominee were a director or executive officer of such registrant; and

(F) all other information relating to such Proposed Nominee or such Proposed Nominee’s associates (as defined below) that would be required to be disclosed in a proxy statement or other filing required to be made by such Noticing Party or any Shareholder Associated Person in connection with the solicitation of proxies for the election of directors in a contested election or otherwise required pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (collectively, the “**Proxy Rules**”);

(ii) as to any other business that such Noticing Party proposes to bring before the meeting:

(A) a reasonably brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting;

(B) the text of the proposal or business (including the complete text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the articles or these bylaws, the language of the proposed amendment); and

(C) all other information relating to such business that would be required to be disclosed in a proxy statement or other filing required to be made by such Noticing Party or any Shareholder Associated Person in connection with the solicitation of proxies in support of such proposed business by such Noticing Party or any Shareholder Associated Person pursuant to the Proxy Rules; and

(iii) as to such Noticing Party, each Proposed Nominee and each Shareholder Associated Person:

(A) the name and address of such Noticing Party, each Proposed Nominee and each Shareholder Associated Person (including, as applicable, as they appear on the corporation's books and records);

(B) the class, series and number of shares of each class or series of capital stock (if any) of the corporation that are, directly or indirectly, owned beneficially and/or of record by such Noticing Party, any Proposed Nominee or any Shareholder Associated Person and the date or dates such shares were acquired and the investment intent of such acquisition;

(C) the name of each nominee holder for, and number of, any securities of the corporation owned beneficially but not of record by such Noticing Party, any Proposed Nominee or any Shareholder Associated Person and any pledge by such Noticing Party, any Proposed Nominee or any Shareholder Associated Person with respect to any of such securities;

(D) a complete and accurate description of all agreements, arrangements or understandings, written or oral, (including any derivative or short positions, profit interests, hedging transactions, options, warrants, convertible securities, stock appreciation or similar rights, repurchase agreements or arrangements, borrowed or loaned shares and so-called "stock borrowing" agreements or arrangements) that have been entered into by, or on behalf of, such Noticing Party, any Proposed Nominee or any Shareholder Associated Person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the price of any securities of the corporation, or maintain, increase or decrease the voting power of such Noticing Party, any Proposed Nominee or any Shareholder Associated Person with respect to securities of the corporation, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation and without regard to whether such agreement, arrangement or understanding is required to be reported on a Schedule 13D in accordance with the Exchange Act (any of the foregoing, a "**Derivative Instrument**");

(E) any substantial interest, direct or indirect (including any existing or prospective commercial, business or contractual relationship with the corporation), by security holdings or otherwise, of such Noticing Party, any Proposed Nominee or any Shareholder Associated Person in the corporation or any affiliate thereof, other than an interest arising from the ownership of corporation securities where such Noticing Party, such Proposed Nominee or such Shareholder Associated Person receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series;

(F) a complete and accurate description of all agreements, arrangements or understandings, written or oral, (I) between or among such Noticing Party and any of the Shareholder Associated Persons or (II) between or among such Noticing Party or any Shareholder Associated Person and any other person or entity (naming each such person or entity) or any Proposed Nominee, including, without limitation, (x) any proxy, contract, arrangement, understanding or relationship pursuant to which such Noticing Party or any Shareholder Associated Person has a right to vote any security of the corporation, (y) any understanding, written or oral, that such Noticing Party or any Shareholder Associated Person may have reached with any shareholder of the corporation (including the name of such shareholder) with respect to how such shareholder will vote such shareholder's shares in the corporation at any meeting of the corporation's shareholders or take other action in support of any Proposed Nominee or other business, or other action to be taken, by such Noticing Party or any Shareholder Associated Person and (z) any other agreements that would be required to be disclosed by such Noticing Party, any Proposed Nominee, any Shareholder Associated Person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D pursuant to Section 13 of the Exchange Act (regardless of whether the requirement to file a Schedule 13D is applicable to such Noticing Party, any Proposed Nominee, such Shareholder Associated Person or such other person or entity);

(G) any rights to dividends on the shares of the corporation owned beneficially by such Noticing Party, any Proposed Nominee or any Shareholder Associated Person that are separated or separable from the underlying shares of the corporation;

(H) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership, limited liability company or similar entity in which such Noticing Party, any Proposed Nominee or any Shareholder Associated Person is (I) a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership or (II) the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of such limited liability company or similar entity;

(I) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the corporation held by such Noticing Party, any Proposed Nominee or any Shareholder Associated Person;

(J) any direct or indirect interest of such Noticing Party, any Proposed Nominee or any Shareholder Associated Person in any contract with the corporation, any affiliate of the corporation or any principal competitor of the corporation (including, without limitation, any employment agreement, collective bargaining agreement or consulting agreement);

(K) a description of any material interest of such Noticing Party, any Proposed Nominee or any Shareholder Associated Person in the business proposed by such Noticing Party, if any, or the election of any Proposed Nominee;

(L) a complete and accurate description of any performance-related fees (other than an asset-based fee) to which such Noticing Party, any Proposed Nominee or any Shareholder Associated Person may be entitled as a result of any increase or decrease in the value of the corporation's securities or any Derivative Instruments, including, without limitation, any such interests held by members of such Noticing Party's, any Proposed Nominee's or any Shareholder Associated Person's immediate family sharing the same household;

(M) the investment strategy or objective, if any, of such Noticing Party, any Proposed Nominee or any Shareholder Associated Person who is not an individual; and

(N) all other information relating to such Noticing Party or any Shareholder Associated Person, or such Noticing Party's or any Shareholder Associated Person's associates, that would be required to be disclosed in a proxy statement or other filing in connection with the solicitation of proxies in support of the business proposed by such Noticing Party, if any, or for the election of any Proposed Nominee in a contested election or otherwise pursuant to the Proxy Rules.

(iv) a representation that such Noticing Party intends to appear in person or by proxy at the meeting to bring such business before the meeting or nominate any Proposed Nominees, as applicable, and an acknowledgment that, if such Noticing Party (or a Qualified Representative (as defined below) of such Noticing Party) does not appear to present such business or Proposed Nominees, as applicable, at such meeting, the corporation need not present such business or Proposed Nominees for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation;

(v) a complete and accurate description of any pending or, to such Noticing Party's knowledge, threatened legal proceeding in which such Noticing Party, any Proposed Nominee or any Shareholder Associated Person is a party or participant involving the corporation or, to such Noticing Party's knowledge, any officer, director, affiliate or associate of the corporation; and

(vi) a representation from such Noticing Party as to whether such Noticing Party or any Shareholder Associated Person intends or is part of a group that intends (I) to deliver a proxy statement and/or form of proxy to a number of holders of the corporation's voting shares reasonably believed by such Noticing Party to be sufficient to approve or adopt the business to be proposed or elect the Proposed Nominees, as applicable, or (II) engage in a solicitation (within the meaning of Exchange Act Rule 14a-1(l) with respect to the nomination or other business, as applicable, and if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation.

(d) Additional Information. In addition to the information required above, the corporation may require any Noticing Party to furnish such other information as the corporation may reasonably require to determine the eligibility or suitability of a Proposed Nominee to serve as a director of the corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such Proposed Nominee, under the listing standards of each securities exchange upon which the corporation's securities are listed, any applicable rules of the Securities and Exchange Commission, any publicly disclosed standards used by the board in selecting nominees for election as a director and for determining and disclosing the independence of the corporation's directors, including those applicable to a director's service on any of the committees of the board, or the requirements of any other laws or regulations applicable to the corporation. If requested by the corporation, any supplemental information required under this paragraph shall be provided by a Noticing Party within ten (10) days after it has been requested by the corporation.

(e) Special Meetings of Shareholders. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting (or any supplement thereto). Nominations of persons for election to the board may be made at a special meeting of shareholders at which directors are to be elected pursuant to the corporation's notice of meeting (or any supplement thereto) (i) by or at the direction of the board (or any duly authorized committee thereof) or (ii) provided that one or more directors are to be elected at such meeting pursuant to the corporation's notice of meeting, by any shareholder of the corporation who (A) is a shareholder of record on the date of the giving of the notice provided for in this Section 3.16(e) through the date of such special meeting, (B) is entitled to vote at such special meeting and upon such election and (C) complies with the notice procedures set forth in this Section 3.16(e). In addition to any other applicable requirements, for director nominations to be properly brought before a special meeting by a shareholder pursuant to the foregoing clause (ii), such shareholder must have given timely notice thereof in proper written form to the secretary. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not earlier than the Close of Business on the one hundred twentieth (120th) day prior to such special meeting and not later than the Close of Business on the later of (x) the ninetieth (90th) day prior to such special meeting and (y) the tenth (10th) day following the day on which public disclosure of the date of the meeting is first made by the corporation. In no event shall an adjournment, recess, postponement or rescheduling of a special meeting (or the public disclosure thereof) commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above. To be in proper written form, such notice shall include all information required pursuant to Section 3.16(c) and Section 3.16(d).

(f) General.

(i) No person shall be eligible for election as a director of the corporation unless the person is nominated by a shareholder in accordance with the procedures set forth in this Section 3.16 or the person is nominated by the board, and no business shall be conducted at a meeting of shareholders of the corporation except business brought by a shareholder in accordance with the procedures set forth in this Section 3.16 or by the board. The number of nominees a shareholder may nominate for election at a meeting may not exceed the number of directors to be elected at such meeting. Except as otherwise provided by law, the presiding officer of a meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these bylaws, and, if the presiding officer of the meeting determines that any proposed nomination or business was not properly brought before the meeting, the presiding officer shall declare to the meeting that such nomination shall be disregarded or such business shall not be transacted, and no vote shall be taken with respect to such nomination or proposed business, in each case, notwithstanding that proxies with respect to such vote may have been received by the corporation. Notwithstanding the foregoing provisions of this Section 3.16, unless otherwise required by law, if the Noticing Party (or a Qualified Representative of the Noticing Party) proposing a nominee for director or business to be conducted at a meeting does not appear at the meeting of shareholders of the corporation to present such nomination or propose such business, such proposed nomination shall be disregarded or such proposed business shall not be transacted, as applicable, and no vote shall be taken with respect to such nomination or proposed business, notwithstanding that proxies with respect to such vote may have been received by the corporation.

(ii) A Noticing Party shall update such Noticing Party's notice provided under the foregoing provisions of this Section 3.16, if necessary, such that the information provided or required to be provided in such notice shall be true and correct (A) as of the record date for determining the shareholders entitled to receive notice of the meeting and (B) as of the date that is ten (10) business days prior to the meeting (or any postponement, rescheduling or adjournment thereof), and such update shall be received by the secretary at the principal executive offices of the corporation (x) not later than the Close of Business five (5) business days after the record date for determining the shareholders entitled to receive notice of such meeting (in the case of an update required to be made under clause (A)) and (y) not later than the Close of Business seven (7) business days prior to the date for the meeting or, if practicable, any postponement, rescheduling or adjournment thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been postponed, rescheduled or adjourned) (in the case of an update required to be made pursuant to clause (B)). For the avoidance of doubt, any information provided pursuant to this Section 3.16(f)(ii) shall not be deemed to cure any deficiencies in a notice previously delivered pursuant to this Section 3.16 and shall not extend the time period for the delivery of notice pursuant to this Section 3.16. If a Noticing Party fails to provide such written update within such period, the information as to which such written update relates may be deemed not to have been provided in accordance with this Section 3.16.

(iii) If any information submitted pursuant to this Section 3.16 by any Noticing Party proposing individuals to nominate for election or reelection as a director or business for consideration at a shareholder meeting shall be inaccurate in any respect, such information shall be deemed not to have been provided in accordance with this Section 3.16. Any such Noticing Party shall notify the secretary in writing at the principal executive offices of the corporation of any inaccuracy or change in any information submitted pursuant to this Section 3.16 within two (2) business days after becoming aware of such inaccuracy or change. Upon written request of the secretary on behalf of the board (or a duly authorized committee thereof), any such Noticing Party shall provide, within seven (7) business days after delivery of such request (or such other period as may be specified in such request), (A) written verification, reasonably satisfactory to the board, any committee thereof or any authorized officer of the corporation, to demonstrate the accuracy of any information submitted by such Noticing Party pursuant to this Section 3.16 and (B) a written affirmation of any information submitted by such Noticing Party pursuant to this Section 3.16 as of an earlier date. If a Noticing Party fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 3.16.

(iv) Notwithstanding the foregoing provisions of this Section 3.16, a shareholder shall also comply with all applicable requirements of state law and the Exchange Act with respect to the matters set forth in this Section 3.16. Nothing in this Section 3.16 shall be deemed to affect any rights of (A) shareholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, (B) shareholders to request inclusion of nominees in the corporation's proxy statement pursuant to the Proxy Rules or (C) the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the articles.

(v) For purposes of these bylaws, (A) "**affiliate**" and "**associate**" each shall have the respective meanings set forth in Rule 12b-2 under the Exchange Act; (B) "**beneficial owner**" or "**beneficially owned**" shall have the meaning set forth for such terms in Section 13(d) of the Exchange Act; (C) "**Close of Business**" shall mean 5:00 p.m. Eastern Time on any calendar day, whether or not the day is a business day; (D) "**public disclosure**" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act; (E) a "**Qualified Representative**" of a Noticing Party means (I) a duly authorized officer, manager or partner of such Noticing Party or (II) a person authorized by a writing executed by such Noticing Party (or a reliable reproduction or electronic transmission of the writing) delivered by such Noticing Party to the corporation prior to the making of any nomination or proposal at a shareholder meeting stating that such person is authorized to act for such Noticing Party as proxy at the meeting of shareholders, which writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, must be produced at the meeting of shareholders; (F) "**Short Interest**" shall mean any agreement, arrangement, understanding, relationship or otherwise, including, without limitation, any repurchase or similar so-called "stock borrowing" agreement or arrangement, involving any Noticing Party or any Shareholder Associated Person of any Noticing Party directly or indirectly, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of shares of the corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Noticing Party or any Shareholder Associated Person of any Noticing Party with respect to any class or series of shares of the corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of shares of the corporation; and (G) "**Shareholder Associated Person**" shall mean, with respect to any Noticing Party, (I) any person directly or indirectly controlling, controlled by, under common control with such Noticing Party, (II) any member of the immediate family of such Noticing Party sharing the same household, (III) any person who is a member of a "group" (as such term is used in Rule 13d-5 under the Exchange Act (or any successor provision at law)) with or is otherwise knowingly acting in concert with such Noticing Party or any other Shareholder Associated Person with respect to the stock of the corporation, (IV) any beneficial owner of shares of stock of the corporation owned of record by such Noticing Party or any other Shareholder Associated Person (other than a shareholder that is a depository), (V) any affiliate or associate of such Noticing Party or any other Shareholder Associated Person, (VI) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such Noticing Party or any other Shareholder Associated Person with respect to any proposed business or nominations, as applicable, and (VII) any Proposed Nominee.

**ARTICLE IV**  
**Board of Directors**

**Section 4.01 Powers.**

(a) General Rule. Unless otherwise provided by statute, all powers vested by law in the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors.

(b) Personal Liability of Directors.

(1) A director shall not be personally liable, as such, for monetary damages (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expenses of any nature, including, without limitation, attorneys' fees and disbursements) for any action taken, or any failure to take any action, before, on or after the date of these bylaws, unless: (i) the director has breached or failed to perform the duties of his or her office under Subchapter B of Chapter 17 of the PBCL; and (ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(2) The provisions of Section 4.01(b)(1) shall not apply to the responsibility or liability of a director pursuant to any criminal statute, or the liability of a director for the payment of taxes pursuant to federal, state or local law.

(3) No amendment or repeal of this Section 4.01 shall have any effect on the liability or alleged liability of any director of the corporation for or with respect to any such act on the part of such director occurring prior to the effective date of such amendment or repeal.

(c) **Directors.** A director shall stand in a fiduciary relation to the corporation and shall perform his or her duties as a director, including his or her duties as a member of any committee of the board upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his or her duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the board upon which he or she does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

#### **Section 4.02 Qualifications and Election of Directors.**

(a) **Qualifications.** Each director of the corporation shall be a natural person of full age who need not be a resident of the Commonwealth of Pennsylvania or a shareholder of the corporation.

(b) **Election of Directors.** Except as otherwise provided in these bylaws, directors of the corporation shall be elected by the shareholders only at an annual meeting of shareholders, unless such election of directors is required by the terms of any series of Preferred Stock. In elections for directors, voting need not be by ballot, unless required by vote of the shareholders before the voting for election of directors begins. Directors shall be elected by a plurality of the votes cast; *provided, however*, that in an election of directors that is not a Contested Election (as defined below), (i) if any nominee who is not an incumbent director receives a plurality of the votes cast but does not receive a majority of the votes cast, the resignation of such nominee referred to in Section 4.03(d) will be automatically accepted and (ii) if any nominee who is an incumbent director receives a plurality of the votes cast but does not receive a majority of the votes cast, the committee of the board authorized to nominate candidates for election to the board will make a recommendation to the board on whether to accept the director's resignation referred to in Section 4.03(d) or whether other action should be taken. The director not receiving a majority of the votes cast will not participate in the committee's recommendation or the board's decision regarding the tendered resignation. The independent members of the board will consider the committee's recommendation and publicly disclose the board's decision and the basis for that decision within 90 days from the date of the certification of the final election results. If less than two members of the committee are elected at a meeting for the election of directors, the independent members of the board who were elected shall consider and act upon the tendered resignation. For purposes of this paragraph, (x) "*Contested Election*" means an annual or special meeting of the corporation with respect to which (i) the secretary receives a notice that a shareholder has nominated or intends to nominate a person for election to the board of directors in compliance with the requirements for shareholder nominees for director set forth in Section 3.16 and (ii) such nomination has not been withdrawn by such shareholder on or prior to the tenth (10th) day before the corporation first mails its notice of meeting for such meeting to the shareholders and (y) a "*majority of the votes cast*" means that the number of shares voted "for" must exceed the number of shares voted "against" with respect to that director's election.

#### **Section 4.03 Number and Term of Office.**

(a) **Number.** The board of directors shall consist of such number of directors, within the range set forth in the articles, as may be determined from time to time by resolution of the board.

(b) Term of Office. Each director shall hold office until the expiration of the term for which he or she was selected and until his or her successor has been selected and qualified or until his or her earlier death, resignation or removal. A decrease in the number of directors shall not have the effect of shortening the term of any incumbent director.

(c) Resignation - General. Any director may resign at any time upon written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as shall be specified in the notice of resignation.

(d) Irrevocable Resignation. Each person who is nominated to stand for election as a director in an election that is not a Contested Election shall, as a condition to such nomination, tender an irrevocable resignation in advance of the meeting for the election of directors. Such resignation will be effective if, pursuant to Section 4.02(b) of these bylaws, (a) in the case of a nominee who is not an incumbent director, such nominee does not receive a majority vote in an election that is not a Contested Election and (b) in the case of a nominee who is an incumbent director, such nominee does not receive a majority vote in an election that is not a Contested Election and the board accepts the resignation.

(e) Election of Directors. Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock, the board of directors shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Directors designated as Class I directors shall initially serve until the first annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2023, and each director nominee elected to succeed any such Class I director as a Class I director shall hold office for a three-year term and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Directors designated as Class II directors shall initially serve until the second annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2024, and each director nominee elected to succeed any such Class II director as a Class II director shall hold office for a two-year term and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Directors designated as Class III directors shall initially serve until the third annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2025, and each director nominee elected to succeed any such Class III director as a Class III director shall hold office for a one-year term and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Commencing with the fourth annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, expected to be held in 2026, directors of each class the term of which shall then or thereafter expire shall be elected to hold office for a one-year term and until their respective successors are duly elected and qualified or until their respective earlier death, resignation or removal. Prior to the fourth annual meeting of shareholders following the time at which the initial classification of the board of directors becomes effective, in case of any increase or decrease, from time to time, in the number of directors (other than directors elected by the holders of any series of Preferred Stock), the number of directors in each class shall be apportioned among the classes as nearly equal as possible. The board of directors is authorized to assign members of the board of directors already in office to Class I, Class II or Class III, with such assignment becoming effective as of the time at which the initial classification of the board of directors becomes effective. Notwithstanding the expiration of the term of a director, such director shall continue to hold office until a successor shall be duly elected and qualified or until such director's earlier death, resignation or removal.

#### **Section 4.04 Vacancies.**

(a) **General Rule.** Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock, a vacancy occurring on the board of directors, including, without limitation, a vacancy resulting from an increase in the number of directors or from the failure by shareholders to elect the full authorized number of directors, may only be filled by a majority of the remaining directors or by the sole remaining director in office. In the event of the death, resignation or removal of a director during such director's elected term of office, such director's successor shall serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is duly elected and qualified or earlier death, resignation or removal.

(b) **Action by Resigned Directors.** When one or more directors resign from the board effective at a future date, the directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancies, the vote thereon to take effect when the resignations become effective.

#### **Section 4.05 Removal of Directors.**

(a) **Removal by the Shareholders.** The entire board of directors, or a class of the board where the board is classified with respect to the power to select directors, or any individual director may be removed from office by the shareholders only as permitted by the articles. In case the board, a class of the board or any one or more directors are so removed, new directors may be elected at the same meeting. The repeal of a provision of the articles or bylaws prohibiting, or the addition of a provision to the articles or bylaws permitting, the removal by the shareholders of the board, a class of the board or a director without assigning any cause shall not apply to any incumbent director during the balance of the term for which the director was elected.

(b) **Removal by the Board.** The board of directors may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year or if, within 60 days after notice of his or her selection, the director does not accept the office either in writing or by attending a meeting of the board of directors.

**Section 4.06 Place of Meetings.** Meetings of the board of directors may be held at such place within or without the Commonwealth of Pennsylvania as the board of directors may from time to time appoint or as may be designated in the notice of the meeting.

**Section 4.07 Organization of Meetings.** At every meeting of the board of directors, the chair of the board, if there be one, or, in the case of a vacancy in the office or absence of the chair of the board, the lead director, or, in the case of a vacancy in the office or absence of both the chair of the board and the lead director, a person chosen by a majority of the directors present, shall act as chair of the meeting. The secretary or, in the absence of the secretary, an assistant secretary, or, in the absence of the secretary and the assistant secretaries, any person appointed by the chair of the meeting, shall act as secretary of the meeting.

**Section 4.08 Regular Meetings.** Regular meetings of the board of directors shall be held at such time and place as shall be designated from time to time by resolution of the board of directors.

**Section 4.09 Special Meetings.** Special meetings of the board of directors shall be held whenever called by the chair of the board, the chief executive officer, if there be one, the lead director, if there be one, or by two or more of the directors.

**Section 4.10 Quorum of and Action by Directors.**

(a) General Rule. A majority of the directors in office of the corporation shall be necessary to constitute a quorum for the transaction of business, and except as otherwise provided in these bylaws, the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the board of directors.

(b) Action by Written Consent. Any action required or permitted to be approved at a meeting of the directors may be approved without a meeting if a consent or consents to the action in record form are signed, before, on or after the effective date of the action, by all of the directors in office on the date the first consent is signed. The consent or consents shall be filed with the minutes of the proceedings of the board of directors.

(c) Notation of Dissent. A director who is present at a meeting of the board of directors, or of a committee of the board, at which action on any corporate matter is taken on which the director is generally competent to act shall be presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting or unless the director files his or her written dissent to the action with the secretary of the meeting before the adjournment thereof or transmits the dissent in writing to the secretary immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action. Nothing in this Section 4.10(c) shall bar a director from asserting that minutes of the meeting incorrectly omitted his or her dissent if, promptly upon receipt of a copy of such minutes, the director notifies the secretary, in writing, of the asserted omission or inaccuracy.

**Section 4.11 Committees of the Board.**

(a) Establishment and Powers. The board of directors may, by resolution adopted by a majority of the directors in office, establish one or more committees to consist of one or more directors of the corporation. Any committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all of the powers and authority of the board of directors except that a committee shall not have any power or authority as to the following:

- (1) The submission to shareholders of any action requiring approval of shareholders under the PBCL.
- (2) The creation or filling of vacancies in the board of directors.
- (3) The adoption, amendment or repeal of these bylaws.
- (4) The amendment or repeal of any resolution of the board that by its terms is amendable or repealable only by the board.
- (5) Action on matters committed by a resolution of the board of directors exclusively to another committee of the board.

(b) Alternate Committee Members. The board may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purposes of any written action by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another director to act at the meeting in the place of the absent or disqualified member.

(c) Term. Each committee of the board shall serve at the pleasure of the board.

(d) Committee Procedures. The term “board of directors” or “board,” when used in any provision of these bylaws relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board.

**Section 4.12 Compensation.** The board of directors shall have the authority to fix the compensation of directors for their services as directors, and a director may be a salaried officer of the corporation.

**Section 4.13 Chair of the Board.** Except as otherwise provided by these bylaws or by action of the board of directors, the chair of the board shall preside at all meetings of the shareholders and of the board of directors. The chair of the board shall perform such other duties as may from time to time be requested by the board of directors. The chair of the board shall be chosen from among the directors and may be an employee of the corporation, but need not be so employed, and may hold any other office of the corporation as from time to time may be determined by the board of directors.

**Section 4.14 Lead Director.** In the event that the chief executive officer or another person who is not an Independent Director (as defined below) serves as the chair of the board, the board may include a lead director. The lead director shall be one of the directors who has been determined by the board to be an “independent director” (any such director, an “**Independent Director**”). The lead director shall preside at all meetings of the board at which the chair of the board is not present, preside over the executive sessions of the Independent Directors, serve as a liaison between the chair of the board and the board and have such other responsibilities and duties as may from time to time be assigned to him or her by the board. The lead director shall be elected by a majority of the Independent Directors.

## **ARTICLE V.** **Officers**

### **Section 5.01 Officers Generally.**

(a) Number, Qualifications and Designation. The officers of the corporation shall include a president, one or more vice presidents (which term shall include vice presidents, executive vice presidents and senior vice presidents), a secretary, a treasurer and a chief executive officer, as the board of directors may designate by resolution, and such other officers as may be elected in accordance with the provisions of Section 5.03. Officers may but need not be directors or shareholders of the corporation. The president, secretary and treasurer shall be natural persons of full age. Any number of offices may be held by the same person.

(b) Bonding. The corporation may secure the fidelity of any or all of its officers by bond or otherwise.

(c) Duties. An officer shall perform such officer's duties as an officer in good faith, in a manner such officer reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who so performs such person's duties shall not be liable by reason of having been an officer of the corporation.

**Section 5.02 Election, Term of Office and Resignations.**

(a) Election and Term of Office. The officers of the corporation, except those elected by delegated authority pursuant to Section 5.03, shall be elected by the board of directors, and each such officer shall hold office at the discretion of the board until his or her death, resignation or removal with or without cause.

(b) Resignations. Any officer may resign at any time upon written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as may be specified in the notice of resignation.

**Section 5.03 Subordinate Officers, Committees and Agents**. The board of directors may from time to time elect such other officers and appoint such committees, employees or other agents as the business of the corporation may require, including without limitation, one or more vice presidents, one or more assistant secretaries and one or more assistant treasurers, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine. The board of directors may delegate to any officer or committee the power to elect subordinate officers and to retain or appoint employees or other agents, or committees thereof, and to prescribe the authority and duties of such subordinate officers, committees, employees or other agents.

**Section 5.04 Removal of Officers and Agents**. Any officer or agent of the corporation may be removed by the board of directors with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 5.05 Vacancies**. A vacancy in any office because of death, resignation, removal, disqualification or any other cause, may be filled by the board of directors or by the officer or committee to which the power to fill such office has been delegated pursuant to Section 5.03, as the case may be, and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

**Section 5.06 Authority.**

(a) **General Rule.** All officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided by or pursuant to resolutions or orders of the board of directors or, in the absence of controlling provisions in the resolutions or orders of the board of directors, as may be determined by or pursuant to these bylaws.

(b) **Chief Executive Officer.** The board of directors may designate from time to time by resolution a chief executive officer. Such chief executive officer may be, but need not be, the president or chair of the board.

**Section 5.07 The Chief Executive Officer.** The chief executive officer, if there be one, may have general supervision over the business and operations of the corporation, subject however, to the control of the board of directors. The chief executive officer may sign, execute and acknowledge, in the name of the corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the board of directors, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors, or by these bylaws, to some other officer or agent of the corporation and, in general, may perform all duties incident to the office of chief executive officer and such other duties as from time to time may be assigned by the board of directors.

**Section 5.08 The President.** The president may have general supervision over the business and operations of the corporation, subject however, to the control of the board of directors and the chief executive officer, as applicable. The president may sign, execute and acknowledge, in the name of the corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the board of directors, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors, or by these bylaws, to some other officer or agent of the corporation and, in general, may perform all duties incident to the office of president and such other duties as from time to time may be assigned by the board of directors or the chief executive officer.

**Section 5.09 The Vice Presidents.** The vice presidents (which term shall include vice presidents, executive vice presidents and senior vice presidents) shall perform such duties as may from time to time be assigned to them by the board of directors or by the chief executive officer.

**Section 5.10 The Secretary.** The secretary or an assistant secretary shall attend all meetings of the shareholders and of the board of directors and shall record all the votes of the shareholders and of the directors and the minutes of the meetings of the shareholders and of the board of directors and of committees of the board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the corporation as required by law; shall be the custodian of the seal of the corporation and see that it is affixed to all documents to be executed on behalf of the corporation under its seal; and, in general, shall perform all duties incident to the office of secretary, and such other duties as may from time to time be assigned by the board of directors or by the chief executive officer.

**Section 5.11 The Treasurer.** The treasurer or an assistant treasurer shall have or provide for the custody of the funds or other property of the corporation; shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner due to or received by the corporation; shall deposit all funds in his, her or its custody as treasurer in such banks or other places of deposit as the board of directors may from time to time designate; shall, whenever so required by the board of directors, render an account showing all transactions as treasurer and the financial condition of the corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the board of directors or by the chief executive officer.

**Section 5.12 Salaries.** The salaries of the officers elected by the board of directors shall be fixed from time to time by the board of directors or by such officer or committee as may be designated by resolution of the board. The salaries or other compensation of any other officers, employees and other agents shall be fixed from time to time by the officer or committee to which the power to elect such officers or to retain or appoint such employees or other agents has been delegated pursuant to Section 5.03. No officer shall be prevented from receiving such salary or other compensation by reason of the fact that the officer is also a director of the corporation.

**ARTICLE VI**  
**Uncertificated Stock, Transfer, Etc.**

**Section 6.01 Uncertificated Shares.**

(a) **Uncertificated Shares.** Except as otherwise specifically provided in any resolutions adopted by the board of directors, shares of common stock and shares of any and all classes or series of any class of Preferred Stock shall be in the form of uncertificated shares. To the extent that shares of the corporation are certificated, certificates for shares of the corporation shall be in such form as approved by the board of directors.

(b) **Statements.** Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates. Except as otherwise expressly provided by law, the rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical.

(c) **Share Register.** The share register or transfer books shall be kept by the secretary or by any transfer agent or registrar designated by the board of directors for that purpose.

**Section 6.02 Transfer.** Shares of the corporation represented by certificates shall be transferred on the share register or transfer books of the corporation upon surrender of the certificate therefor, endorsed by the person named in the certificate or by an attorney lawfully constituted in writing. No transfer shall be made inconsistent with the provisions of the Uniform Commercial Code, 13 Pa.C.S. §§ 8101 *et seq.*, and its amendments and supplements. Upon receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be canceled, and the issuance of new equivalent uncertificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the corporation. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates.

**Section 6.03 Record Holder of Shares.** The corporation shall be entitled to treat the person in whose name any share or shares of the corporation stand on the books of the corporation as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such share or shares on the part of any other person.

**Section 6.04 Lost, Destroyed or Mutilated Certificates.** The holder of any shares of the corporation shall immediately notify the corporation of any loss, destruction or mutilation of the certificate therefor, and the treasurer, the secretary or any assistant treasurer or assistant secretary of the corporation may direct new uncertificated shares to be issued to such holder, in case of mutilation of the certificate, upon the surrender of the mutilated certificate or, in case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction and, if any such officer shall so determine, the deposit of a bond in such form and in such sum, and with such surety or sureties, as any of them may direct.

**ARTICLE VII.**  
**Indemnification of Directors, Officers and**  
**Other Authorized Representatives**

**Section 7.01 Right to Indemnification.** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***proceeding***"), by reason of the fact that such person is or was a director or an officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, its participants or beneficiaries (hereinafter an "***indemnitee***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent permitted or required by the PBCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; *provided, however*, that, except as provided in Section 7.03 with respect to proceedings to enforce rights to indemnification or to advancement of expenses, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the board of directors of the corporation. The termination of any action or proceeding by judgment, order, settlement or conviction upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. Notwithstanding the foregoing, in the case of any proceeding by or in the right of the corporation, no person shall be entitled to indemnification under this Section 7.01 if such person has been adjudged to be liable to the corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the corporation is located or the court in which the action was brought determines upon application that, despite the adjudication or liability but in view of all of the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses that the court of common pleas or other court deems proper. Action with respect to an employee benefit plan taken or omitted in good faith by a representative of the corporation in a manner such representative reasonably believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the corporation.

**Section 7.02 Right to Advancement of Expenses.** The right to indemnification conferred in Section 7.01 shall include the right to be paid by the corporation the expenses (including, without limitation, attorneys' fees and expenses) incurred in defending or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "**advancement of expenses**"); *provided, however*, that, if the PBCL so requires, an advancement of expenses incurred by an indemnitee shall be made only upon delivery to the corporation of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined that such indemnitee is not entitled to be indemnified for such expenses under Section 7.01, Section 7.02 or otherwise. The rights to indemnification and to the advancement of expenses conferred in Sections 7.01 and 7.02 shall be contract rights, and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Each person who shall act as an indemnitee of the corporation shall be deemed to be doing so in reliance upon the rights provided by this Article VII.

**Section 7.03 Right of Indemnitee to Bring Suit.** If a claim under Section 7.01 or Section 7.02 is not paid in full by the corporation within 60 calendar days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 calendar days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses if the indemnitee has not met any applicable standard for indemnification set forth in the PBCL. Neither the failure of the corporation (including its board of directors, independent legal counsel or shareholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the PBCL, nor an actual determination by the corporation (including its board of directors, independent legal counsel or shareholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the corporation.

**Section 7.04 Non-Exclusivity of Rights.** The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of, nor be deemed in limitation of, any other right to which any person may otherwise be or become entitled or permitted under any statute, the articles, these bylaws, any agreement, any vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding that office; *provided, however*, that no such indemnification shall be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

**Section 7.05 Insurance.** The corporation may maintain insurance, at its expense, to protect itself and any current or former director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the PBCL.

**Section 7.06 Indemnification of Employees and Agents of the Corporation.** The corporation may, to the extent authorized from time to time by the board of directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

**Section 7.07 Interpretation; Amendments.** The provisions of this Article VII are intended to constitute bylaws authorized by Section 1746 of the PBCL. Any repeal, amendment or modification of any provision contained in this Article VII shall, unless otherwise required by law, be prospective only (except to the extent any amendment or change in law permits the corporation to further limit or eliminate the liability of directors or officers) and shall not adversely affect any right or protection of any current or former director or officer of the corporation existing at the time of such repeal, amendment or modification with respect to any acts or omissions occurring prior to such repeal, amendment or modification.

## **ARTICLE VIII.** **Emergency Bylaws**

**Section 8.01 Scope of Article.** This Article shall be applicable during any emergency resulting from a catastrophe as a result of which a quorum of the board of directors cannot readily be assembled. To the extent not in conflict with this Article, these bylaws shall remain in effect during the emergency.

**Section 8.02 Special Meetings of the Board.** A special meeting of the board of directors may be called by any director by means feasible at the time.

### **Section 8.03 Emergency Committee of the Board.**

(a) **Composition.** The emergency committee of the board shall consist of nine persons standing highest on the following list who are available and able to act:

The chief executive officer.

Members of the board of directors.

President.

The individual who, immediately prior to the emergency, was the senior officer in charge of nuclear operations.

The individual who, immediately prior to the emergency, was the senior officer in charge of other operations.

The individual who, immediately prior to the emergency, was the senior officer in charge of finance operations.

Other officers.

Where more than one person holds any of the listed ranks, the order of precedence shall be determined by length of time in rank. Each member of the emergency committee thus constituted shall continue to act until replaced by an individual standing higher on the list. The emergency committee shall continue to act until a quorum of the board of directors is available and able to act. If the corporation has no directors, the emergency committee shall cause a special meeting of shareholders for the election of directors to be called and held as soon as practicable.

(b) **Powers.** The emergency committee shall have and may exercise all of the powers and authority of the board of directors, including the power to fill a vacancy in any office of the corporation or to designate a temporary replacement for any officer of the corporation who is unavailable, but shall not have the power to fill vacancies in the board of directors.

(c) **Quorum.** A majority of the members of the emergency committee in office shall constitute a quorum.

(d) **Status.** Each member of the emergency committee who is not a director shall during his or her service as such be entitled to the rights and immunities conferred by law, the articles and these bylaws upon directors of the corporation and upon persons acting in good faith as a representative of the corporation during an emergency.

#### **ARTICLE IX.** **Miscellaneous**

**Section 9.01 Corporate Seal.** The corporation may have a corporate seal in the form of a circle containing the name of the corporation, the year of incorporation and such other details as may be approved by the board of directors from time to time.

**Section 9.02 Checks.** All checks, notes, bills of exchange or other orders in writing shall be signed by such person or persons as the board of directors or any person authorized by resolution of the board of directors may from time to time designate.

**Section 9.03 Contracts.** Except as otherwise provided in the PBCL in the case of transactions that require action by the shareholders, the board of directors may authorize any officer or agent to enter into any contract or to execute or deliver any instrument on behalf of the corporation, and such authority may be general or confined to specific instances.

**Section 9.04 Voting by the Corporation.** Shares of or memberships in a domestic or foreign corporation for profit or not-for-profit other than the corporation, standing in the name of a shareholder or member that is the corporation, may be voted by the persons and in the manner provided for in the case of business corporations by Section 3.11(a) unless the laws of the jurisdiction in which the issuer of the shares or memberships is incorporated require the shares or memberships to be voted by some other person or persons or in some other manner in which case, to the extent that those laws are inconsistent herewith, this Section 9.04 shall not apply.

#### **Section 9.05 Interested Directors or Officers; Quorum.**

(a) General Rule. A contract or transaction between the corporation and one or more of its directors or officers or between the corporation and another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise in which one or more of its directors or officers are directors or officers or have a financial or other interest, shall not be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because his, her or their votes are counted for that purpose, if:

(i) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(ii) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those shareholders; or

(iii) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the shareholders.

(b) Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes a contract or transaction specified in Section 9.05(a).

**Section 9.06 Deposits.** All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may approve or designate, and all such funds shall be withdrawn only upon checks signed by such one or more officers or employees as the board of directors shall from time to time determine.

#### **Section 9.07 Corporate Records.**

(a) Required Records. The corporation shall keep complete and accurate books and records of account, minutes of the proceedings of the incorporators, shareholders and directors and a share register giving the names and addresses of all shareholders and the number and class of shares held by each. The share register shall be kept at the registered office of the corporation in the Commonwealth of Pennsylvania, at the corporation's principal place of business wherever situated, at any actual business office of the corporation or at the office of its registrar or transfer agent. Any books, minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time.

(b) Right of Inspection. Every shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a shareholder. In every instance where an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a verified power of attorney or other writing that authorizes the attorney or other agent to so act on behalf of the shareholder. The demand shall be directed to the corporation at its registered office in the Commonwealth of Pennsylvania, at its principal place of business wherever situated, or in care of the person in charge of an actual business office of the corporation.

**Section 9.08 Amendment of Bylaws.**

(a) General Rule. Except as otherwise provided in the express terms of any series of the shares of the corporation, any one or more of the foregoing bylaws and, except as otherwise stated in this Section 9.08(a), any other bylaws made by the board of directors or shareholders may be amended or repealed by the board of directors. The shareholders or the board of directors may adopt new bylaws except that the board of directors may not adopt, amend or repeal bylaws that the PBCL specifies may be adopted only by shareholders, and the board of directors may not amend or repeal any bylaw adopted by the shareholders that provides that it shall not be amended or repealed by the board of directors. Notwithstanding the foregoing, except as otherwise provided in the express terms of any series of the shares of the corporation, any adoption of new bylaws, or amendment or repeal of the bylaws, by the shareholders shall require the affirmative vote of at least a majority of the voting power of all shares of the corporation entitled to vote generally in the election of directors, voting together as a single class.

(b) Effective Date. Any change in these bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

\* \* \* \* \*

**TRANSITION SERVICES AGREEMENT**

**By and Between**

**EXELON CORPORATION**

**and**

**CONSTELLATION ENERGY CORPORATION**

**Dated as of**

**January 31, 2022**

---

**TABLE OF CONTENTS**

	Page
ARTICLE I DEFINITIONS	2
Section 1.1    Certain Definitions	2
Section 1.2    Interpretation	5
ARTICLE II SERVICES	6
Section 2.1    Services	6
Section 2.2    Services Modifications	8
Section 2.3    Third Party Providers	9
Section 2.4    No Violations	10
Section 2.5    Independent Contractor	10
Section 2.6    Employment, Employees and Representatives	10
Section 2.7    Access	11
Section 2.8    Practice Area Executive Leaders; Separation Oversight Committee	11
Section 2.9    Disputes	11
ARTICLE III PAYMENT	12
Section 3.1    Pricing	12
Section 3.2    Taxes	12
Section 3.3    Billing and Payment	12
Section 3.4    Budgeting and Accounting	14
Section 3.5    Credits, Rebates and Refunds	14
Section 3.6    True-Up	14
ARTICLE IV DISCLAIMER OF REPRESENTATIONS AND WARRANTIES	14
Section 4.1    Disclaimer	14
Section 4.2    As Is; Where Is	15
ARTICLE V INDEMNIFICATION; LIMITATION OF LIABILITY	15
Section 5.1    Indemnification by the Service Providing Party	15
Section 5.2    Limitation of Liability	15
Section 5.3    Indemnification Procedure; Other Rights	16
ARTICLE VI FORCE MAJEURE	16
Section 6.1    General	16
Section 6.2    Notice	16
Section 6.3    Subcontractors; Fees	16

Section 6.4	Limitations	17
ARTICLE VII TERM, TERMINATION AND EXIT		17
Section 7.1	Term and Termination of Services	17
Section 7.2	Effect of Termination	18
ARTICLE VIII CONFIDENTIALITY		19
Section 8.1	Confidentiality	19
Section 8.2	System Security	19
Section 8.3	Joint Defense Agreements or Common Interest Privilege	19
ARTICLE IX MISCELLANEOUS		20
Section 9.1	Further Assurances	20
Section 9.2	Amendments and Waivers	20
Section 9.3	Entire Agreement	20
Section 9.4	Third-Party Beneficiaries	20
Section 9.5	Notices	21
Section 9.6	Counterparts; Electronic Delivery	21
Section 9.7	Severability	21
Section 9.8	Assignability; Binding Effect	21
Section 9.9	Governing Law	21
Section 9.10	Construction	21
Section 9.11	Performance	22
Section 9.12	Title and Headings	22
Section 9.13	Exhibits	22
Section 9.14	Effective Time	22
Section 9.15	Export Controls	22
Section 9.16	Utility Services	22
Section 9.17	No Duplication of Charges	22
Section 9.18	Incorporation by Reference	23
<u>Exhibit A</u>	TSA Services	A-1
<u>Exhibit B</u>	TSA Governance	B-1

## TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (as the same may be amended or supplemented from time to time, this “**Agreement**”) is entered into as of January 31, 2022, by and between Exelon Corporation, a Pennsylvania corporation (“**Exelon**”), and Constellation Energy Corporation, a Pennsylvania corporation (“**Constellation**”). Exelon and Constellation are sometimes referred to herein individually as a “**Party**,” and collectively as the “**Parties**.” Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Separation Agreement.

### RECITALS

WHEREAS, Exelon conducts (i) a business involving the regulated transmission, supply, and distribution of electricity and natural gas, principally through Exelon Energy Delivery Company, LLC and its Subsidiaries (the “**Exelon Business**”) and (ii) a business involving the competitive power generation and marketing and trading of electricity and gas, principally through Exelon Generation Company, LLC and its Subsidiaries (the “**Constellation Business**”);

WHEREAS, Exelon and Constellation have entered into a Separation Agreement, dated as of the date hereof (the “**Separation Agreement**”), pursuant to which Exelon will contribute the Constellation Business to Constellation and then distribute the Constellation shares that it receives in exchange to Exelon’s shareholders, thereby causing Constellation to become a publicly-traded company;

WHEREAS, the Separation Agreement sets forth certain covenants and agreements made in connection with the contribution and distribution, including the transfer of assets and assumption of liabilities;

WHEREAS, in connection with the transactions contemplated by the Separation Agreement, (a) Constellation desires to procure certain services from Exelon, and Exelon is willing to provide such services to Constellation, (b) Exelon desires to procure certain services from Constellation, and Constellation is willing to provide such services to Exelon, and (c) the Parties desire to work together to provide certain limited services for their mutual benefit, in each case during a transition period and on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, each Party recognizes the provision of these transition services are necessary to operating their respective business and therefore to delivering the economic benefits anticipated by Exelon and Constellation shareholders;

WHEREAS, each Party desires to set forth in this Agreement the principal terms and conditions pursuant to which it will, as applicable, provide or receive such services; and

WHEREAS, the execution of this Agreement by the Parties is a condition precedent to the consummation of the transactions contemplated by the Separation Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.1 **Certain Definitions.** As used in this Agreement, (i) capitalized terms used herein without definition shall have the meanings assigned to such terms in the Separation Agreement and (ii) the following capitalized terms shall have the following meanings, applicable both to the singular and the plural forms of the terms described:

“**Additional Interest**” has the meaning set forth in Section 3.3(b).

“**Additional Services**” has the meaning set forth in Section 2.2(a).

“**Additional Constellation Third Party Providers**” has the meaning set forth in Section 2.4(c).

“**Additional Exelon Third Party Providers**” has the meaning set forth in Section 2.4(b).

“**Adjustment Amount**” has the meaning set forth in Section 3.6.

“**Agreement**” has the meaning set forth in the preamble to this Agreement and includes all Exhibits and Schedules attached hereto or delivered pursuant hereto.

“**Bankruptcy Code**” means 11 U.S.C. §§ 101 et seq., as amended.

“**Constellation**” has the meaning set forth in the preamble to this Agreement.

“**Constellation Business**” has the meaning set forth in the Recitals to this Agreement.

“**Constellation Known Third Party Providers**” has the meaning set forth in Section 2.4(c).

“**Constellation Service Costs**” means the amounts to be paid by Exelon to Constellation for Constellation Services provided pursuant to this Agreement.

“**Constellation Services**” means the services identified in Exhibit A to be provided by Constellation.

“**Contract**” means any written, oral, implied or other contract, agreement, covenant, lease, license, guaranty, indemnity, representation, warranty, option, assignment, sales order, purchase order, power of attorney, instrument or other commitment, assurance, undertaking or arrangement that is binding on any Person or entity or any part of its property under applicable Law.

“**CTA**” means those costs identified by the Parties as costs necessary to achieve and to effect the transaction referenced in the Separation Agreement and to transition the organizations, policies, processes and systems. CTA reflect costs related to the transaction that would otherwise not have been incurred but for the transaction.

**“Data Separation Principles”** has the meaning set forth in the Separation Agreement.

**“Deliverables”** means all documents, work product, and other materials that are delivered to Service Receiving Party from Service Providing Party under this Agreement.

**“Dispute Committee”** has the meaning set forth in the Separation Agreement.

**“Effective Time”** means 12:01 a.m. (Eastern time) on February 1, 2022.

**“Exelon”** has the meaning set forth in the preamble to this Agreement.

**“Exelon Business”** has the meaning set forth in the Recitals to this Agreement.

**“Exelon Known Third Party Providers”** has the meaning set forth in Section 2.4(b).

**“Exelon Service Costs”** means the amounts to be paid by Constellation to Exelon for the Exelon Services provided pursuant to this Agreement.

**“Exelon Services”** means the services identified in Exhibit A to be provided by Exelon.

**“Exelon Utility”** means each of the following entities: Atlantic City Electric Company, a New Jersey corporation, Baltimore Gas and Electric Company, a Maryland corporation, Commonwealth Edison Company, an Illinois corporation, Delmarva Power & Light Company, a Delaware and Virginia corporation, PECO Energy Company, a Pennsylvania corporation and Potomac Electric Power Company, a District of Columbia and Virginia corporation.

**“Intellectual Property Rights”** all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trade secrets, know-how, and other confidential information, but excluding trademarks, service marks, trade dress, trade names, and logos.

**“Losses”** has the meaning set forth in the Separation Agreement.

**“Known Third Party Providers”** means the Exelon Known Third Party Providers and the Constellation Known Third Party Providers collectively.

**“Parties”** has the meaning set forth in the preamble to this Agreement.

**“Party”** has the meaning set forth in the preamble to this Agreement.

**“Payment Date”** has the meaning set forth in Section 3.3(b).

**“Practice Area”** has the meaning set forth in Exhibit A.

**“Practice Area Executive Leader”** has the meaning set forth in Section 2.8.

**“Restricted Confidential Information”** is information that is protected by law, regulation or policy that requires the highest level of access control and security protection as further defined in Exelon LE-AC-301 in effect immediately prior to the Effective Date.

**“Sales Taxes”** has the meaning set forth in [Section 3.2](#).

**“Security Regulations”** has the meaning set forth in [Section 8.3\(a\)](#).

**“Separation Agreement”** has the meaning set forth in the Recitals to this Agreement.

**“Separation Oversight Committee”** has the meaning set forth in the Separation Agreement.

**“Service Cost”** is the cost of each Exelon Service and Constellation Service as set forth in [Exhibit A](#). The Service Cost does not include the TSA Administrative Fee, which shall be billed as a separate line item.

**“Service Providing Party”** means either Exelon or Constellation, or their respective designee, as applicable, providing the applicable Services to the Service Receiving Party.

**“Service Providing Party Group”** means the Service Providing Party and the Subsidiaries of the Service Providing Party (including its or their contractors), other than the other Party and the other Party’s Subsidiaries.

**“Service Receiving Party”** means either Exelon or Constellation, or their respective designee, as applicable, receiving the applicable Services from the Service Providing Party.

**“Service Receiving Party Group”** means the Service Receiving Party and the Subsidiaries of the Service Receiving Party, other than the other Party and the other Party’s Subsidiaries.

**“Service Receiving Party’s Indemnitee”** means, if the Service Receiving Party is Exelon, the Exelon Indemnitee, or if the Service Receiving Party is Constellation, the Constellation Indemnitee.

**“Services”** means the Exelon Services and Constellation Services collectively.

**“Systems”** has the meaning set forth in [Section 8.3\(a\)](#).

**“Term”** means the period from the Effective Time to the second anniversary of the Effective Date or as otherwise provided in [Section 7.1\(b\)](#) or [\(c\)](#).

**“Terminated Services”** has the meaning set forth in [Section 2.2\(a\)](#).

**“Third Party Products and Services”** has the meaning set forth in [Section 2.3\(a\)](#).

**“Third Party Providers”** has the meaning set forth in [Section 2.3\(a\)](#).

**“TSA Administrative Fee”** has the meaning set forth in [Section 3.1\(c\)](#).

“*TSA Designated Personnel*” has the meaning set forth in [Section 2.6\(c\)](#).

Section 1.2 Interpretation. In this Agreement, unless the context clearly indicates otherwise:

- (a) words used in the singular include the plural and words used in the plural include the singular;
- (b) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;
- (c) the word “or” shall have the inclusive meaning represented by the phrase “and/or”;
- (d) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;
- (e) accounting terms used herein shall have the meanings historically ascribed to them by Exelon and its Subsidiaries in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;
- (f) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (g) reference to any Law means such Law (including any and all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (h) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; a reference to such Person’s “Affiliates” shall be deemed to mean such Person’s Affiliates following the Distribution under the Separation Agreement and any reference to a third party shall be deemed to mean a Person who is not a Party or an Affiliate of a Party;
- (i) if there is any conflict between the provisions of the main body of this Agreement and an Exhibit, the provisions of the main body of this Agreement shall control unless explicitly stated otherwise in such Exhibit;
- (j) if there is any conflict between the provisions of this Agreement and the Separation Agreement, the provisions of this Agreement shall control (but only with respect to the subject matter hereof) unless explicitly stated otherwise herein; and
- (k) any portion of this Agreement obligating a Party to take any action or to refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or to refrain from taking such action, as the case may be.

**ARTICLE II**  
**SERVICES**

Section 2.1 Services.

(a) Exelon Services

(i) Exelon shall provide the services for which it is identified as the Service Providing Party in Exhibit A. Except as set forth in Exhibit A, Exelon shall use commercially reasonable efforts to provide (or to cause another applicable member of the Exelon Group to provide) to Constellation (or another applicable member of the Constellation Group) the Exelon Services in a manner, scope, nature, timeliness and quality materially consistent with the manner, scope, nature, timeliness and quality in which such Exelon Services (i) were provided to Constellation (or such other applicable member of the Constellation Group) immediately prior to the Effective Time by Exelon (or such other applicable member of the Exelon Group) and (ii) are provided after the Effective Time by Exelon (or such other applicable member of the Exelon Group) for its own business. In its capacity as the Service Providing Party, Exelon shall act in a professional, workmanlike and competent manner and, except as specifically provided on Exhibit A, in a manner with substantially the same degree of skill, quality and care utilized (or which would have been utilized) immediately prior to the Effective Time. Subject to this Section 2.1(a), Exelon shall have control over assignment of its personnel, contractors, employees or other service providers to be assigned to provide such Exelon Services.

(ii) For those Exelon Services provided to Constellation, Constellation shall use the Exelon Services for substantially the same purposes and in substantially the same manner (including as to volume, amount, level or frequency, as applicable) as such Exelon Services have been used immediately prior to the Effective Time and Exelon shall have no obligation to provide, or cause to be provided, such Exelon Services within a greater scope or in a greater volume than, or at a different location than, such Exelon Services were provided by Exelon or a member of Exelon Group to Constellation immediately prior to the Effective Time; provided that Exhibit A shall control the scope of and any limitation on the Exelon Services to be provided (to the extent set forth therein) including any Exelon Services that were not previously provided to Constellation prior to the Effective Time, unless otherwise agreed in writing pursuant to Section 2.2(a).

(b) Constellation Services

(i) Constellation shall provide the services for which it is identified as the Service Providing Party in Exhibit A. Except as set forth in Exhibit A, Constellation shall use commercially reasonable efforts to provide (or to cause another applicable member of the Constellation Group to provide) to Exelon (or another applicable member of the Exelon Group) the Constellation Services in a manner, scope, nature, timeliness and quality materially consistent with the manner, scope, nature, timeliness and quality in which such Constellation Services (i) were provided to Exelon (or such other applicable member of the Exelon Group) immediately prior to the Effective Time by Constellation (or such other applicable member of the Constellation Group) and (ii) are provided after the Effective Time by Constellation (or such other applicable member of the Constellation Group) for its own business. In its capacity as the Service Providing Party, Constellation shall act in a professional, workmanlike and competent manner and, except as specifically provided on Exhibit A, in a manner with substantially the same degree of skill, quality and care utilized (or which would have been utilized) immediately prior to the Effective Time. Subject to this Section 2.1(b), Constellation shall have control over assignment of its personnel, contractors or other service providers to be assigned to provide such Constellation Services.

(ii) For those Constellation Services provided to Exelon prior to the Effective Time, Exelon shall use the Constellation Services for substantially the same purposes and in substantially the same manner (including as to volume, amount, level or frequency, as applicable) as such Constellation Services have been used immediately prior to the Effective Time and Constellation shall have no obligation to provide, or cause to be provided, such Constellation Services within a greater scope or in a greater volume than, or at a different location than, such Constellation Services were provided by Constellation or a member of Constellation Group to Exelon immediately prior to the Effective Time; provided that Exhibit A shall control the scope of and any limitation on the Constellation Services to be provided (to the extent set forth therein) including any Constellation Services that were not previously provided to Exelon prior to the Effective Time, unless otherwise agreed in writing pursuant to Section 2.2(a).

(c) The Parties acknowledge the transitional nature of the Services and agree to cooperate in good faith and to use commercially reasonable efforts to effectuate a smooth transition of the Services from the Service Providing Party to the Service Receiving Party.

(d) Service Providing Party hereby grants to Service Receiving Party a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable, non-sublicenseable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell, and otherwise exploit any Intellectual Property Rights of the Service Providing Party to the extent incorporated in, combined with or otherwise necessary for the use of the Exelon Services or Constellation Services, as applicable, solely to the extent reasonably required in connection with Service Receiving Party's receipt or use of any Deliverables or the Exelon Services or Constellation Services, as applicable.

(e) The Parties agree that unless otherwise specifically stated in Exhibit A, any Exelon Services or Constellation Services, or any part thereof, may be used by both the Service Providing Party and Service Receiving Party.

Section 2.2 Services Modifications.

(a) If the Service Receiving Party reasonably determines that additional transition services not listed in Exhibit A are necessary after the Effective Time or that certain services are no longer required, the Service Receiving Party shall provide written notice of the change to the Service Providing Party and the Separation Oversight Committee requesting the Service Providing Party:

(i) to provide additional (including as to volume, amount, level or frequency, as applicable) or different services that the Service Providing Party is not expressly obligated to provide under this Agreement, if such services are of the type and scope provided by any member of the Service Providing Party Group (including any employee of any member of the Service Providing Party Group) for the Service Receiving Party prior to the Effective Time, or to expand the scope of any applicable Service (such additional, different or expanded services being referred to as the “**Additional Services**”) or

(ii) to delete from the applicable Exhibit, and to cease all work on, one or more Services that is no longer required (such deleted services being referred to as “**Terminated Services**”) in accordance with the proviso to Section 7.1(a).

No request for modification of an Exhibit will be effective unless approved or acknowledged in writing by the Separation Oversight Committee. Modifications include any renewal, change order or other amendment of a procurement contract related to the transition services that requires payment in excess of the amount set forth in the original budget for such transition service.

(b) The Service Providing Party shall notify the Separation Oversight Committee within ten (10) calendar days of receipt of a request by a Service Receiving Party for Additional Services under Section 2.2(a) as to whether it can or cannot provide the Additional Services or needs additional time for such determination. In providing its response to the Separation Oversight Committee, to the extent the Additional Service is consistent with those services provided immediately prior to the Effective Date, the Service Providing Party shall consider such request in good faith and shall use commercially reasonable efforts to provide any such Additional Service; provided that no member of the Service Providing Party Group shall be obligated to perform any Additional Services if such member, in its reasonable judgment, does not have adequate resources to perform such Additional Services; or if the provision of such Additional Services would interfere with the operation of the Exelon Business or Constellation Business, as applicable; or if the required volume, amount, level, or frequency materially exceeds that provided immediately prior to the Effective Time. If the Service Providing Party agrees to provide the Additional Services and the Separation Oversight Committee approves such Additional Services pursuant to this Section 2.2, then the Parties shall in good faith negotiate the terms of a supplement to Exhibit A, which will describe in reasonable detail the Additional Services, project scope, term, price and payment terms to be charged for such Additional Services.

(c) Once approved by the Separation Oversight Committee, the supplement to Exhibit A, shall be deemed part of this Agreement as of such date, the Additional Services shall be deemed the applicable “Services” provided hereunder, in each case, subject to the terms and conditions of this Agreement; and once terminated as provided in Section 7.1(a), the Terminated Services shall be deemed removed from this Agreement.

Section 2.3 Third Party Providers.

(a) The Service Providing Party shall use commercially reasonable efforts to obtain any required consents, licenses or approvals of the providers (“**Third Party Providers**”) of any products or services required to be used in providing any applicable Services pursuant to this Agreement (“**Third Party Products and Services**”). The Parties understand and agree that provision of any applicable Services requiring the use of any Third Party Products and Services shall be subject to receipt of any required consents, licenses or approvals of the applicable Third Party Providers; provided that if any third-party consents, licenses or approvals are not obtained pursuant to the foregoing, the Service Providing Party will, to the extent reasonably practicable, continue to use commercially reasonable efforts to provide (or to cause another applicable member of the Exelon Group or Constellation Group, as applicable, to provide) services that are substantially similar to the applicable Services for which such consent, license or approval was sought but not obtained, subject to Section 2.4. For the avoidance of doubt, nothing in this provision shall require the Service Providing Party to be out of compliance with any Contract. The Service Receiving Party shall indemnify and hold harmless the Service Providing Party from and against any and all Losses arising out of or resulting from such arrangements or services provided for which such consent, license or approval was sought but not obtained.

(b) With respect to the Exelon Services, (i) Constellation hereby consents to Exelon’s use of any Third Party Provider(s) with respect to such Exelon Services (“**Exelon Known Third Party Providers**”) and (ii) if, after the date of this Agreement, Exelon reasonably determines that it requires the use of Third Party Providers in addition to the Exelon Known Third Party Providers (“**Additional Exelon Third Party Providers**”) in providing such Exelon Services, the use of such Additional Exelon Third Party Providers shall require the written consent of Constellation’s Practice Area Executive Leader and, subject to Section 2.3(d), such consent will not be unreasonably withheld, conditioned or delayed. If consent is not provided by Constellation’s Practice Area Executive Leader and is determined by Exelon to be reasonably necessary, then Exelon may, to the extent it reasonably determines as necessary and after notice to the Separation Oversight Committee, pause or stop providing such Exelon Services that would otherwise require an Additional Exelon Third Party Provider.

(c) With respect to the Constellation Services, (i) Exelon hereby consents to Constellation’s use of any Third Party Provider(s) with respect to such Constellation Services (“**Constellation Known Third Party Providers**”) and (ii) if, after the date of this Agreement, Constellation reasonably determines that it requires the use of Third Party Providers in addition to the Constellation Known Third Party Providers (“**Additional Constellation Third Party Providers**”) in providing such Constellation Services, the use of such Additional Constellation Third Party Providers shall require the written consent of Exelon’s Practice Area Executive Leader and, subject to Section 2.3(d), such consent will not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, if consent is not provided by Exelon’s Practice Area Executive Leader and is determined by Constellation to be reasonably necessary, then Constellation may, to the extent it reasonably determines as necessary and after notice to the Separation Oversight Committee, pause or stop providing such Constellation Services that would otherwise require an Additional Constellation Third Party Provider.

(d) Notwithstanding the foregoing, in those instances in which the use of Third Party Products and Services will require payment of additional consideration by a Service Receiving Party and the payment of such additional consideration is not contemplated by this Agreement (including Exhibit A) or has not been previously agreed by the Parties, then (i) the Service Providing Party will provide the Service Receiving Party and the Separation Oversight Committee with thirty (30) calendar days' prior written notice detailing the amount of such additional consideration and (ii) the Service Receiving Party will then have the option to (A) procure its own Third Party Products and Services at its own expense or (B) upon approval by the Separation Oversight Committee, authorize the Service Providing Party to incur the required additional consideration either pursuant to the billing methodology set forth in Exhibit A or on its behalf and at the Service Receiving Party's expense and such additional consideration will be deemed an applicable Service Cost under this Agreement.

Section 2.4 No Violations; Regulatory Approvals. Notwithstanding anything to the contrary in this Agreement, no Service Providing Party (nor any member of its respective Group) shall be required to perform the applicable Services hereunder or to take any actions relating thereto that conflict with or violate any applicable Law or material contract, sublicense, authorization, certification or permit; or to secure additional regulatory approvals, or renew or extend the terms of any regulatory approval that would otherwise expire to provide Services or to take any actions relating thereto that conflict with or violate any applicable Law or any material contract, sublicense, authorization, certification or permit, in the absence of such additional regulatory approval.

Section 2.5 Independent Contractor. Each Service Providing Party hereto (and each applicable member of the Service Providing Party Group) shall act under this Agreement solely as an independent contractor, and unless otherwise set forth herein or in an Exhibit, not as an agent, of the other Party (and each applicable member of the Service Providing Party Group).

Section 2.6 Employment, Employees and Representatives.

(a) Unless otherwise agreed in writing, each employee and representative of the Service Providing Party (or a member of the Service Providing Party Group) that provides Services to the Service Receiving Party (or a member of the Service Receiving Party Group) pursuant to this Agreement (i) shall be deemed for all purposes to be an employee or representative of Service Providing Party (or a member of the Service Providing Party Group) and not an employee or representative of Service Receiving Party (or a member of the Service Receiving Party Group) and (ii) shall be under the direction, control and supervision of the Service Providing Party (or such member of the Service Providing Party Group), and Service Providing Party (or a member of the Service Providing Party Group) shall have the sole right to exercise all authority with respect to the employment (including termination of employment) and assignment of such employee or representative and shall have the sole responsibility to pay for all personnel and other related expenses, including salary or wages, of such employee or representative.

(b) Employees from both Exelon and Constellation shall work together to jointly deliver the Services. The commitment of resources to perform the work between Parties for the associated labor costs will be addressed by the Parties by the Practice Area Executive Leaders. For the avoidance of doubt, Service Receiving Party is solely responsible for establishing all necessary capabilities to become self-sufficient; provided that the Practice Area Executive Leaders agree to cause the respective Service Providing Party to use reasonable efforts to facilitate such knowledge transfer, consistent with Exhibit B. Under no circumstances will the joint effort to deliver the Services be construed or considered by either Party as co-employment of employees, a joint venture or partnership.

(c) Employees and Representatives who require access to view confidential, Restricted Confidential Information or data belonging to the other company in the delivery of Services will be classified as “**TSA Designated Personnel**” and shall be subject to the Data Separation Principles. Such TSA Designated Personnel will be required to enter into an attestation consistent with the Data Separation Principles and other provisions consistent with employment status.

Section 2.7 Access. The Service Receiving Party shall provide (or cause any applicable member of the Service Receiving Party to provide) the Service Providing Party (or any applicable member of the Service Providing Party Group) such reasonable access to the employees, representatives, facilities and books and records of the Service Receiving Party (or such member of the Service Receiving Party Group) as the Service Providing Party (or such member of the Service Providing Party Group) shall reasonably request in order to enable the Service Providing Party (or such member of the Service Receiving Party Group) to provide any applicable Services required under this Agreement. Any member of the Service Providing Party Group receiving access pursuant to this Section 2.7 must conform with and abide by the confidentiality and security provisions in Article VIII, as applicable.

Section 2.8 Practice Area Executive Leaders; Separation Oversight Committee. Each Party shall appoint a representative to act as the primary contact with respect to the provision of the Services for each Practice Area (each such person, a “**Practice Area Executive Leader**”). The Practice Area Executive Leaders shall be responsible for all aspects of the day-to-day management (including, for the avoidance of doubt, any necessary delegation) of their Practice Area and achieving the exit date for each Service as set forth in Exhibit A or otherwise modified pursuant to this Agreement. The initial Practice Area Executive Leaders for Constellation and Exelon shall be set forth in Exhibit B. The Practice Area Executive Leaders shall meet in person or by telephone on a regular basis to address any arising matters within their Practice Area and as expeditiously as possible to resolve any dispute under this Agreement (including any disputes relating to payments under Article III). Should the Practice Area Executive Leaders be unable to resolve their dispute, either may bring the dispute to the Separation Oversight Committee. The Service Providing Party shall continue to provide the Service during the course of the dispute resolution. Each Party may treat an act of the other Party’s Practice Area Executive Leader as being authorized by such other Party without inquiring whether such Practice Area Executive Leader had authority to so act; provided that no Practice Area Executive Leader shall have authority to amend this Agreement.

Section 2.9 Disputes. Any dispute that is not resolved by the Separation Oversight Committee shall be deemed a Dispute under the Separation Agreement and shall be submitted to the Dispute Committee and resolved in accordance with the dispute resolution procedures set forth in Article X of the Separation Agreement. When a disputed amount has been resolved, either by mutual agreement of the Parties or by a final decision by an arbitration panel under Article X of the Separation Agreement, the Party owing any amount to another Party shall pay such amount owed to such other Party within five (5) Business Days following such resolution.

**ARTICLE III**  
**PAYMENT**

Section 3.1 Pricing.

(a) All Exelon Services provided by Exelon (or another applicable member of the Exelon Group) shall be charged to Constellation at the fees for such Exelon Services determined in accordance with Exhibit A, and the Exelon Service Costs shall be payable by Constellation in the manner set forth in Section 3.3.

(b) All Constellation Services provided by Exelon (or another applicable member of the Exelon Group) shall be charged to Exelon at the fees for such Constellation Services determined in accordance with Exhibit A, and the Constellation Service Costs shall be payable by Exelon in the manner set forth in Section 3.3.

(c) Pricing of the Services fees shall be based on actual cost to provide the service plus a mutually agreed upon “**TSA Administrative Fee**” which will be of fair market value. The TSA Administrative Fee will be billed as a line-item in the TSA billing process.

Section 3.2 Taxes. The Parties acknowledge that fees charged for Services may be subject to goods and service taxes, gross receipts taxes, value added taxes, excise taxes, sales taxes or similar taxes (collectively, “**Sales Taxes**”). With respect to all Services provided under this Agreement, (a) the Service-Providing Party shall be responsible for collecting as required under the law, reporting and paying the Sales Taxes imposed on fees received for providing such Services and (b) the Service- Receiving Party shall reasonably promptly reimburse the Service-Providing Party for the amount of such taxes paid on fees received for providing such Services to the extent that the pricing of the fees does not already include such taxes. To the extent Sales Taxes are not collected from Service-Receiving Party due to such party’s presentation of a valid direct payment permit or exemption certificate to the Service-Providing Party, the Service-Receiving Party shall then be liable for any applicable use taxes imposed on the applicable Services received. Upon the reasonable request by the Service-Receiving Party, the Service-Providing Party shall provide evidence of payment of the taxes that are presented for reimbursement.

Section 3.3 Billing and Payment.

(a) With respect to Constellation as the Service Providing Party, within seven (7) Business Days after the end of each month, and with respect to Exelon as the Service Providing Party, within seven (7) Business Days after the end of each month, the Service Providing Party will invoice the Service Receiving Party for the applicable Service Costs and the TSA Administrative Fee on a monthly basis, in arrears, for the prior month just ended. The invoice shall be materially consistent with the invoice process immediately prior to the Effective Date and set forth in reasonable detail for the period covered by such invoice (i) the Services rendered, (ii) the Service Costs for each type of Service provided, (iii) Sales Taxes or any other applicable taxes imposed on the fees unless the Service Receiving Party provides a valid direct payment permit or exemption certificate; (iv) identification of the charges that are CTA or non-CTA; and (v) such additional information as may be reasonably requested by the Service Receiving Party. For administrative purposes, invoices may be presented at a summary level with respect to the Services rendered and separately reference a detached report in which detail will be provided by Service, including taxable Services and the Sales Tax therefore, separated from non-taxable Services.

(b) The Service Receiving Party agrees to pay all of the applicable undisputed TSA Administrative Fee and Service Costs that are not settled pursuant to an offset against amounts owed pursuant to Section 3.3(d) on or before thirty (30) calendar days after the date on which an invoice for the TSA Administrative Fee and Service Costs is delivered to the Service Receiving Party (the “**Payment Date**”) by check or wire transfer of immediately available funds to an account designated in writing from time to time by the Service Providing Party. If the Service Receiving Party fails to pay any monthly payment on or before the Payment Date, the Service Providing Party shall provide written notice to the Service Receiving Party of such failure promptly following the Payment Date and if the Service Receiving Party fails to pay any monthly payment within fifteen (15) calendar days of delivery of such written notice, the Service Receiving Party shall be obligated to pay, in addition to the amount due pursuant to such invoice, interest on such amount at a rate of the higher of the Fed Funds Rate or the Money Market Fund per day calculated from the Payment Date (“**Additional Interest**”). Unless otherwise agreed in writing between the Parties, all payments made pursuant to this Agreement shall be made in U.S. dollars.

(c) Notwithstanding the foregoing, if the Service Receiving Party in good faith disputes any invoiced charge, the Service Receiving Party shall pay the undisputed portion of the invoice and payment of the disputed charge shall be made only after mutual resolution of such dispute pursuant to Section 2.9. The Service Receiving Party agrees to notify the Service Providing Party promptly, and in no event later than the relevant Payment Date, of any disputed charge. Additional Interest shall not accrue on any amount in dispute, and no default shall be alleged until after the relevant Payment Date.

(d) Prior to the Service Receiving Party making a payment of any amounts due pursuant to this Section 3.3, the Service Receiving Party may elect to offset against such payment any amounts owed by the Service Providing Party to the Service Receiving Party that has not been disputed pursuant to Section 3.3(c).

(e) During the term of this Agreement and for a period ending on the sixth (6<sup>th</sup>) anniversary of the termination of the applicable Service, each Party shall keep such books, records and accounts as are reasonably necessary to verify the calculation of the fees and related expense for Services provided hereunder. The Service Providing Party shall provide documentation supporting any amounts invoiced pursuant to this Section 3.3 as the Service Receiving Party may from time to time reasonably request. The Service Receiving Party shall have the right to review such books, records and accounts at any time during normal business hours upon reasonable written notice, and the Service Receiving Party agrees to conduct any such review in a manner so as not to unreasonably interfere with the Service Providing Party’s normal business operations.

Section 3.4 Budgeting and Accounting. Upon reasonable request, each Party will cooperate with the other Party with respect to budgeting and accounting matters relating to the Services. Either Party can notify the Separation Oversight Committee at any time it deems such a matter to be material in nature and such matter shall be resolved consistent with Exhibit B.

Section 3.5 Credits, Rebates and Refunds. All Third Party Provider credits, rebates, refunds or other final pricing adjustments to products and services used in the delivery of the Services will be allocated to the Service Receiving party in a manner that is consistent with the allocation of the costs charged to the Service Receiving Party, unless the contract with the Third Party Provider stipulates otherwise.

Section 3.6 True-Up. Each Service Providing Party shall deliver to the Service Receiving Party a cost adjustment report within ninety (90) days after the end of the Term. Such cost adjustment report shall specify (i) the total charges incurred by the Service Receiving Party under the Agreement, as determined by the fees and other charges set forth in Exhibit A; (ii) the Service Providing Party's costs for the Services provided to the Service Receiving Party under the Agreement, together with a reasonably specific itemization of such costs, subject to Section 3.5; and (iii) the "**Adjustment Amount**", which is defined as the aggregate costs incurred by the Service Providing Party to provide such Services (as described in (ii) above) less the aggregate fees and other charges calculated in accordance with the Agreement (as described in (i) above). If the Adjustment Amount is positive, then the Service Providing Party shall include an invoice with such report for such Adjustment Amount, which amount shall be due and payable within thirty (30) calendar days after receipt of such invoice, as well as subject to contention in accordance with the provisions of Section 3.3. If the Adjustment Amount is negative, then the Service Providing Party shall credit the Service Receiving Party for the Adjustment Amount against the next payment(s) due to the Service Providing Party by the Service Receiving Party under this Agreement, and to the extent any such Services are no longer being provided, the Service Providing Party shall remit payment for such negative amount to the Service Receiving Party together with the cost adjustment report. For the avoidance of doubt, the mutually agreed TSA Administrative Fee shall not be subject to this Section 3.6. The Parties agree to use commercially reasonable efforts to agree to a process to resolve any other adjustments necessary following the end of the Term.

#### **ARTICLE IV**

#### **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

Section 4.1 Disclaimer.

(a) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 2.1, CONSTELLATION ACKNOWLEDGES AND AGREES THAT EXELON (AND EACH MEMBER OF THE EXELON GROUP) MAKES NO REPRESENTATIONS OR WARRANTIES (INCLUDING WARRANTIES OF MERCHANTABILITY, ADEQUACY OR FITNESS FOR A PARTICULAR PURPOSE) OR GUARANTIES OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY SERVICES PROVIDED HEREUNDER.

(b) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 2.1, EXELON ACKNOWLEDGES AND AGREES THAT CONSTELLATION (AND EACH MEMBER OF THE CONSTELLATION GROUP) MAKES NO REPRESENTATIONS OR WARRANTIES (INCLUDING WARRANTIES OF MERCHANTABILITY, ADEQUACY OR FITNESS FOR A PARTICULAR PURPOSE) OR GUARANTIES OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY SERVICES PROVIDED HEREUNDER.

Section 4.2 As Is; Where Is. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES (AND ANY RELATED PRODUCTS) TO BE PROVIDED UNDER THIS AGREEMENT ARE FURNISHED AS IS, WHERE IS, WITH ALL FAULTS. NEITHER PARTY WARRANTS TO THE OTHER THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE SUFFICIENT TO ALLOW THE OTHER PARTY TO SUCCESSFULLY TRANSITION, MANAGE OR OPERATE ITS BUSINESS.

**ARTICLE V**  
**INDEMNIFICATION; LIMITATION OF LIABILITY**

Section 5.1 Indemnification by the Service Providing Party. The Service Providing Party hereby agrees to indemnify, defend and hold harmless the Service Receiving Party Indemnitees from and against any and all Losses relating to, arising out of or resulting from the Service Providing Party's Group gross negligence or willful misconduct in the performance of its obligations hereunder, or material breach of this Agreement, other than to the extent such Losses are attributable to the gross negligence, willful misconduct or material breach of this Agreement by any member of the Service Receiving Party's Group.

Section 5.2 Limitation of Liability.

IN NO EVENT SHALL ANY MEMBER OF THE SERVICE PROVIDING PARTY'S GROUP, NOR ANY DIRECTOR, OFFICER, MANAGER, EMPLOYEE OR AGENT THEREOF, BE LIABLE, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE TO THE SERVICE RECEIVING PARTY (OR ANY SERVICE RECEIVING PARTY'S INDEMNITEES) FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, REMOTE OR SPECULATIVE DAMAGES AS A RESULT OF ANY BREACH, PERFORMANCE OR NON-PERFORMANCE BY SUCH PERSON UNDER THIS AGREEMENT, WHETHER OR NOT SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT ANY SUCH AMOUNT IS PAID TO A THIRD PARTY BY THE SERVICE RECEIVING PARTY OR ANY OF ITS AFFILIATES.

THE SERVICE PROVIDING PARTY'S TOTAL LIABILITY TO THE SERVICE RECEIVING PARTY UNDER THIS AGREEMENT FOR ANY CLAIM SHALL NOT EXCEED, IN THE AGGREGATE, AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY THE SERVICE RECEIVING PARTY FOR THE APPLICABLE SERVICES UNDER THIS AGREEMENT. FOR PURPOSES OF THE PRECEDING SENTENCE, "TOTAL AMOUNT PAID" SHALL BE INCLUSIVE OF OFFSETS PERMITTED IN SECTION 3.3 AND EXCLUDE AMOUNTS PAID OR REIMBURSED BY THE SERVICE RECEIVING PARTY TO THE SERVICE PROVIDING PARTY FOR PAYMENTS BY THE SERVICE PROVIDING PARTY TO ANY THIRD PARTY PROVIDERS.

Section 5.3 Indemnification Procedure; Other Rights. All claims for indemnification pursuant to Section 5.1 shall be made in accordance with the procedures set forth in Section 9.4 and 9.5 of the Separation Agreement and shall be subject to Sections 9.6 through 9.9 of the Separation Agreement.

**ARTICLE VI**  
**FORCE MAJEURE**

Section 6.1 General. If the Service Providing Party (or any member of the Service Providing Party Group) is prevented from or delayed in complying, in whole or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, earthquake, strike, walkout, lockout or other labor trouble or shortage, delays by unaffiliated suppliers or carriers, shortages of fuel or energy sources, power, raw materials or components, equipment failure, any law, order, proclamation, regulation, ordinance, demand, seizure or requirement of any Governmental Authority, riot, civil commotion, acts of war (declared or undeclared), rebellion, act of terrorism, nuclear or other accident, explosion, casualty, pandemic, act of God, or act, omission or delay in acting by any Governmental Authority or by the Service Receiving Party (or any member of the Service Receiving Party Group) or any other cause, whether or not of a class or kind listed in this sentence, which is beyond the reasonable control of Service Providing Party (or any other applicable member of the Service Providing Party Group), then upon notice to Service Receiving Party pursuant to Section 6.2, the affected provisions and/or other requirements of this Agreement shall be suspended during the period of such disability and, unless otherwise set forth herein to the contrary, Service Providing Party (and any applicable member of the Service Providing Party Group) shall have no liability to Service Receiving Party (or any member of the Service Receiving Party Group) in connection therewith. The Service Receiving Party shall not be required to pay any fees applicable to any period during which the Service Providing Party's performance is excused pursuant to this Section 6.1 and the applicable Services contemplated to be provided hereunder are not actually performed. Each Party shall use commercially reasonable efforts to minimize the effect of any such event. The applicable end date for any affected Service set forth in Exhibit A, shall be automatically extended for a period of time equal to the time lost by reason of the suspension.

Section 6.2 Notice. Upon becoming aware of a cause of delay in the performance or preventing performance of any Services to be provided by Service Providing Party (or another member of the Service Providing Party Group) under this Agreement, Service Providing Party shall promptly notify Service Receiving Party in writing of the existence of such disability and the anticipated duration of the disability, if then known.

Section 6.3 Subcontractors; Fees. The Service Receiving Party shall have the right, but not the obligation, to hire or engage one or more subcontractors to perform the applicable Services affected by the disability for the duration of the period during which such disability delays or prevents the performance of such Services by the Service Providing Party, it being agreed that the fees paid or payable under this Agreement with respect to the applicable Services affected by the disability shall be reduced (or refunded, if applicable) on a dollar-for-dollar basis for all amounts paid by the Service Receiving Party to such subcontractors; provided that the Service Providing Party shall not be responsible for the amount of fees charged by any such subcontractors to perform such Services to the extent they exceed the fees payable under this Agreement for such Services.

Section 6.4 Limitations. Each Party shall use its commercially reasonable efforts to promptly remove any cause under Section 6.1 as soon as possible; provided that nothing in this Article VI will be construed to require the settlement of any lawsuit or other legal proceeding, strike, walkout, lockout or other labor dispute on terms which, in the reasonable judgment of the affected Party, are contrary to its interest. It is understood that the settlement of a lawsuit or other legal proceeding, strike, walkout, lockout or other labor dispute will be entirely within the discretion of the affected Party.

## **ARTICLE VII**

### **TERM, TERMINATION AND EXIT**

#### Section 7.1 Term and Termination of Services.

(a) Subject to Section 7.1(d), Section 6.1 and except as otherwise set forth in Exhibit A, a Service shall be provided for the term specified in Section 7.1(b); provided that the Service Receiving Party shall have the right to terminate one or more of the applicable Services that it receives under this Agreement at the end of a designated quarter by giving the Service Providing Party and the Separation Oversight Committee the longer of (a) at least sixty (60) calendar days' prior written notice of such termination or (b) in the case of any Service that the Service Providing Party incurs an expense from an unrelated third-party, the period of time required to terminate such third-party expense, but in no event longer than ninety (90) days unless the Service Providing Party, in its reasonable judgment, determines that a longer period of time is commercially reasonable. The Parties shall cooperate with each other in good faith in their efforts to reasonably effect early termination of such Services, including, where applicable, partial termination, and to agree in good faith upon appropriate reduction of the charges hereunder in connection with such early termination.

(b) Except as otherwise set forth in Exhibit A (as amended or otherwise supplemented), the provision of a Service under this Agreement shall terminate upon the earlier of (a) the cessation of all Services pursuant to Section 7.1(a), or (b) the 24 month anniversary of the Effective Time. Either Party may request the Separation Oversight Committee approve the extension of the period for such Service (i) for up to an additional three (3) months, on the same terms and conditions (including with respect to fees) as such Service was provided during the initial term for such Service, and (ii) thereafter, for up to an additional three (3) months, on the same terms and conditions as previously provided, except (A) the Service Cost for such Service provided during such extension period may be increased as mutually agreed by the Parties, and (B) the TSA Administrative Fee during such extension period will be determined by the Separation Oversight Committee, and unless determined otherwise by the Separation Oversight Committee, will be as set forth in Exhibit A. Thereafter, any extension to the term for a Service shall be at the sole discretion of the Party who did not request the extension, with no liability to the requesting Party for such lack of extension.

(c) This Agreement, except for Section 2.1 and Section 2.2, shall survive the termination of Services, and any such termination shall not affect any payment obligation for Services rendered prior to termination.

(d) Notwithstanding the foregoing: (i) the Parties may terminate the provision of one or more Services under this Agreement by approval of the Separation Oversight Committee and mutual written consent and (ii) the Parties each reserve the right to immediately terminate the provision of the applicable Services under this Agreement by written notice to the other Party in the event that such other Party shall have (A) applied for or consented to the appointment of a receiver, trustee or liquidator; (B) admitted in writing an inability to pay debts as they mature; (C) made a general assignment for the benefit of creditors; or (D) filed a voluntary petition, or have filed against it a petition, for an order of relief under the Bankruptcy Code.

Section 7.2 Effect of Termination.

(a) Termination or expiration of a Service under this Agreement shall not release a Party from any liability or obligation which already has accrued as of the effective date of such termination or expiration, and shall not constitute a waiver or release of, or otherwise be deemed to adversely affect, any rights, remedies or claims, which a Party may have hereunder at law, equity or otherwise or which may arise out of or in connection with such termination or expiration.

(b) As promptly as practicable following termination of any Service, and the payment by the Service Receiving Party of all amounts owing hereunder, the Service Providing Party shall return all reasonably available material, inventory and other property of the Service Receiving Party Group held by the Service Providing Party Group and shall deliver copies of all of the Service Receiving Party Group's records maintained by the Service Providing Party Group with regard to such Service in the Service Providing Party's standard format and media. The Service Providing Party shall deliver such property and records to such location or locations as reasonably requested by the Service Receiving Party. Arrangements for shipping, including the cost of freight and insurance, and the reasonable cost of packing incurred by the Service Providing Party shall be borne by the Service Receiving Party.

(c) Other than pursuant to its document retention policies or applicable Law and unless specifically agreed upon by the Parties, upon termination of a Service, the Service Providing Party is no longer required to retain or store any materials, Systems or data related to the Terminated Service, nor shall it be obligated to provide any such materials, Systems or data to the Service Receiving Party with respect to such Terminated Service; provided, that if either Party determines that records in its possession belong to the other Party, the Party in possession may arrange for the transfer of those records to the other Party by providing written notice to the other Party, and the Party not in possession shall respond to any such notice within thirty (30) Business Days that either it shall accept that transfer or it shall permit the destruction of those records (with a non-response within thirty (30) Business Days being deemed an election by the Party not in possession to permit the destruction of records that are the subject of the notice from the Party in possession).

**ARTICLE VIII**  
**CONFIDENTIALITY**

Section 8.1 Confidentiality. Each Party agrees that the specific terms and conditions of this Agreement and any information conveyed or otherwise received by or on behalf of a Party in conjunction herewith shall be Confidential Information subject to the confidentiality provisions (and exceptions thereto) set forth in Section 8.7 of the Separation Agreement, including causing its respective directors, officers, employees, agents, consultants and advisors to hold, in strict confidence, and not disclose or release or use, without the prior written consent of such member of the other Party.

Section 8.2 System Security.

(a) If the Service Providing Party (or a member of the Service Providing Party Group) is given access to the computer systems, data, or software (collectively, “**Systems**”) of the Service Receiving Party (or a member of the Service Receiving Party Group) in connection with the provision of any Services, the Service Providing Party shall comply (or cause such member of the Service Providing Party Group to comply) with all of the system security policies, procedures and requirements (collectively, “**Security Regulations**”) of the Service Receiving Party (or such member of the Service Receiving Party Group), and shall not (or shall cause such member of the Service Providing Party Group not to) tamper with, compromise or circumvent any security or audit measures employed by the Service Receiving Party (or such member of the Service Receiving Party Group). The Service Providing Party shall (or shall cause such member of the Service Providing Party Group to) access and use only those Systems of the Service Receiving Party (or such member of the Service Receiving Party Group) for which it has been granted the right to access and use.

(b) The Service Providing Party shall use commercially reasonable efforts to ensure that only those of its personnel (or the personnel of such member of the Service Providing Party Group) who are specifically authorized to have access to the Systems of the Service Receiving Party (or such member of the Service Receiving Party Group) gain such access, and use commercially reasonable efforts to prevent unauthorized access, use, destruction, alteration or loss of information contained therein, including notifying its personnel (or the personnel of such member of its Group) of the restrictions set forth in this Agreement and of the Security Regulations.

Section 8.3 Joint Defense Agreements or Common Interest Privilege.

(a) In connection with any matter contemplated by this Agreement, the Parties agree to, and shall cause the applicable members of their Group to, use commercially reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

(b) The Parties recognize and agree that, under this Agreement, employees of one Party in certain circumstances may provide services to the other Party at the direction of counsel for the other Party, subject to attorney-client privilege. In such instances, the employees providing such services will treat their communications and work product as privileged and protected.

**ARTICLE IX**  
**MISCELLANEOUS**

Section 9.1 Further Assurances. Subject to the limitations or other provisions of this Agreement, (a) each Party shall, and shall cause the other members of its Group to, use commercially reasonable efforts (subject to, and in accordance with applicable Law) to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, and to assist and cooperate with the other Party in doing, all things reasonably necessary, proper or advisable to carry out the intent and purposes of this Agreement, including using commercially reasonable efforts to perform all covenants and agreements herein applicable to such Party or any member of its Group and (b) neither Party will, nor will either Party allow any other member of its Group to, without the prior written consent of the other Party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the provision of any Services hereunder during the Term. Without limiting the generality of the foregoing, where the cooperation of third parties would be necessary in order for a Party to completely fulfill its obligations under this Agreement, such Party shall use commercially reasonable efforts to cause such third parties to provide such cooperation.

Section 9.2 Amendments and Waivers.

(a) Subject to Section 11.1 of the Separation Agreement and Section 2.2 of this Agreement, this Agreement may not be amended except by an agreement in writing signed by both Parties.

(b) Any term or provision of this Agreement may be waived by the Party entitled to the benefit thereof and any such waiver shall be validly and sufficiently given for the purposes of this Agreement if it is in writing signed by an authorized representative of such Party. No delay or failure in exercising any right, power or remedy hereunder shall affect or operate as a waiver thereof; nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or remedy preclude any further exercise thereof or of any other right, power or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that either Party would otherwise have.

Section 9.3 Entire Agreement. This Agreement, the Separation Agreement, the other Ancillary Agreements, and the Exhibits and Schedules referenced herein and therein and attached hereto or thereto, constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior negotiations, agreements, commitments, writings, courses of dealing and understandings with respect to the subject matter hereof.

Section 9.4 Third-Party Beneficiaries. Except as provided in Article V relating to Service Receiving Party's Indemnitees, this Agreement is solely for the benefit of the Parties and shall not be deemed to confer upon third parties any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

Section 9.5 Notices. All notices, requests, permissions, waivers and other communications hereunder shall be provided in accordance with the provisions of Section 12.8 of the Separation Agreement.

Section 9.6 Counterparts; Electronic Delivery. This Agreement may be executed in multiple counterparts, each of which when executed shall be deemed to be an original, but all of which together shall constitute one and the same agreement. Execution and delivery of this Agreement or any other documents pursuant to this Agreement by facsimile or other electronic means shall be deemed to be, and shall have the same legal effect as, execution by an original signature and delivery in person.

Section 9.7 Severability. If any term or other provision of this Agreement or the Exhibits attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

Section 9.8 Assignability; Binding Effect. The rights and obligations of each Party under this Agreement shall not be assignable, in whole or in part, directly or indirectly, whether by operation of law or otherwise, by such Party without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed) and any attempt to assign any rights or obligations under this Agreement without such consent shall be null and void. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to any of their respective Affiliates, provided that no such assignment shall release such assigning Party from any liability or obligation under this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

Section 9.9 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Delaware, without regard to any conflicts of law provisions thereof that would result in the application of the laws of any other jurisdiction.

Section 9.10 Construction. This Agreement shall be construed as if jointly drafted by the Parties and no rule of construction or strict interpretation shall be applied against either Party. The Parties are not relying upon any representations or statements made by the other Party regarding this Agreement.

Section 9.11 Performance. Each Party shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary or Affiliate of such Party.

Section 9.12 Title and Headings. Titles and headings to Sections and Articles are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Section 9.13 Exhibits. The Exhibits attached hereto are incorporated herein by reference and shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

Section 9.14 Effective Time. This Agreement shall be effective as of the Effective Time.

Section 9.15 Export Controls. The Parties agree to fully comply with the applicable Laws relating to the exportation of commodities or technical data and economic and trade sanctions, including but not limited to: 15 CFR Parts 730 et seq., 10 CFR Part 110, and 10 CFR Part 810, 15 CFR Parts 700-799, and the U.S. Office of Foreign Assets Control Sanctions Lists, as issued from time to time, or any successor Laws. In the event of any ambiguity or inconsistency between the provisions of this Section 9.15 and any other Section of these Terms and Conditions or the Separation Agreement, this Section 9.15 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) 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) 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. In the event that Contractor's Services will involve physical or logical access to nuclear information or technology that is controlled for export by the DOE under 10 CFR Part 810, Exelon standard procurement form Exhibit O (Nuclear Information and Technology Export Control Special Terms and Conditions) will apply.

Section 9.16 Utility Services. Notwithstanding anything to the contrary in this Agreement, no Exelon Utility shall be a member of a Service Providing Party Group, nor shall it be required to provide any services under this Agreement, without such Exelon Utility's express consent.

Section 9.17 No Duplication of Charges. Any amounts payable pursuant to the terms of this Agreement will be paid without duplication and in no event will Constellation or Exelon be entitled to recover against the other Party more than once to the extent such amounts were already paid under any other agreement between the Parties in connection with the consummation of the Distribution.

Section 9.18 Incorporation by Reference. The following sections of the Separation Agreement are hereby incorporated in this Agreement by reference to the extent not inconsistent with any of the provisions set forth in this Agreement: Section 8.7 (Confidentiality); Section 8.8 (Privileged Matters); Section 12.3 (Amendments and Waivers); Section 12.4 (Entire Agreement); Section 12.5 (Survival of Agreements); Section 12.9 (Counterparts; Electronic Delivery); Section 12.10 (Severability); Section 12.11 (Assignability; Binding Effect); Section 12.12 (Governing Law); Section 12.13 (Construction); Section 12.14 (Performance); Section 12.15 (Title and Headings); and Section 12.16 (Schedules and Exhibits).

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers as of the date first set forth above.

EXELON CORPORATION

By: /s/ Christopher Crane  
Name: Christopher Crane  
Title: President and Chief Executive Officer

CONSTELLATION ENERGY CORPORATION

By: /s/ Joseph Dominguez  
Name: Joseph Dominguez  
Title: President and Chief Executive Officer

[Transition Services Agreement]

---

**TAX MATTERS AGREEMENT**

THIS TAX MATTERS AGREEMENT is dated January 31, 2022, by and among Exelon Corporation (“**Exelon**”), a Pennsylvania corporation, by and on behalf of itself and each Affiliate of Exelon (as determined after the Distribution), and Constellation Energy Corporation, a Pennsylvania corporation and, immediately prior to the Distribution (as defined below), a direct, wholly-owned subsidiary of Exelon (“**Constellation**”), by and on behalf of itself and each Affiliate of Constellation (as determined after the Distribution). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Separation Agreement, dated January 31, 2022, by and between Exelon and Constellation (the “**Separation Agreement**”).

**RECITALS**

WHEREAS, Exelon is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated U.S. federal income Tax Return (the “**Exelon Federal Consolidated Group**”);

WHEREAS, as of the date of this Agreement and immediately prior to the Distribution, Constellation is a subsidiary of Exelon and a member of the Exelon Federal Consolidated Group;

WHEREAS, the board of directors of Exelon has determined that it is advisable and in the best interests of Exelon and its shareholders to separate the Exelon Business and the Constellation Business, which separation shall be effected by Exelon contributing the Constellation Business to Constellation and then distributing the Constellation shares that it receives in exchange to Exelon’s shareholders on a pro rata basis, thereby causing Constellation to become a separate, publicly-traded company;

WHEREAS, it is the intention of the Parties that the Contribution (as defined below) and the Distribution together qualify as a reorganization within the meaning of Sections 368(a)(1)(D) and 355 of the Code;

WHEREAS, Exelon has received the IRS Ruling and the Tax Opinion (each as defined below), together substantially to the effect that the Distribution, together with certain related transactions, will qualify for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Code;

WHEREAS, in contemplation of the Contribution and the Distribution, Exelon and Constellation desire to set forth their agreement as to the rights and obligations of Exelon, Constellation, and their respective Affiliates with respect to the responsibility, handling and allocation of federal, state and local Taxes, and various other Tax matters.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants, and provisions of this Agreement, Exelon, Constellation, and their respective Affiliates (as determined after the Distribution) mutually covenant and agree as follows:

---

**ARTICLE I  
DEFINITIONS**

“**Active Business**” means any trades or businesses conducted by Exelon or its Affiliates or Constellation or its Affiliates, as the case may be, that are relied upon, including the trades or businesses reflected in the Tax Opinion or the IRS Ruling, to satisfy Section 355(b) of the Code.

“**Adjustment**” means an adjustment of any item of income, gain, loss, deduction, credit or any other item affecting Taxes of a taxpayer pursuant to a Final Determination.

“**Advisory Firm**” has the meaning prescribed in Section 7.02.

“**Affiliate**” has the meaning set forth in the Separation Agreement.

“**After Tax Amount**” means any additional amount necessary to reflect (through a gross-up mechanism) the hypothetical Tax consequences of the receipt or accrual of any payment required to be made under this Agreement (including payment of an additional amount or amounts hereunder and the effect of the deductions available for interest paid or accrued and for Taxes, such as state and local income Taxes), determined by using the highest marginal corporate Tax rate (or rates, in the case of an item that affects more than one Tax) for the relevant taxable period (or portion thereof).

“**Agreement**” means this Tax Matters Agreement, including any schedules, exhibits, and appendices attached hereto.

“**Ancillary Agreement**” has the meaning set forth in the Separation Agreement.

“**ASC 740-10**” means Financial Accounting Standard Board Accounting Standard Codification Subtopic 740-10, Income Taxes, including any amended or successor version.

“**Attribute Issue**” has the meaning prescribed in Section 5.03(b).

“**Benefited Party**” has the meaning prescribed in Section 2.06(c).

“**Business Day**” has the meaning set forth in the Separation Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Constellation**” has the meaning set forth in the preamble.

“**Constellation Allocable Audit Portion**” means the amount of any additional Taxes due and payable that are attributable to a Pre-Distribution Period or the portion of a Straddle Period ending on the Distribution Date that were not reported on a Tax Return filed or provided to a Taxing Authority for such Pre-Distribution Period or Straddle Period, in each case to the extent such additional Taxes are attributable to any member of the Constellation Group. The determination of the amount of Taxes due and payable that are attributable to any member of the Constellation Group included in an Exelon Combined Group shall be made in a manner consistent with past practice of the Parties under the Prior Tax Sharing Agreement.

**“Constellation Allocable Portion”** means, with respect to a Tax Return filed or provided to a Taxing Authority after the Distribution Date for either a Pre-Distribution Period or Straddle Period, the positive amount (if any) of Taxes due and payable, after taking into account all prior payments, including estimated payments, for such Pre-Distribution Period or Straddle Period attributable to any member of the Constellation Group. The determination of the amount of Taxes due and payable that are attributable to any member of the Constellation Group included in an Exelon Combined Group shall be made in a manner consistent with past practice of the Parties under the Prior Tax Sharing Agreement.

**“Constellation Business”** has the meaning set forth in the Separation Agreement.

**“Constellation Common Stock”** has the meaning set forth in the Separation Agreement.

**“Constellation Group”** means Constellation and Affiliates of Constellation immediately after the Distribution, and entities that become Affiliates thereafter.

**“Constellation Liabilities”** has the meaning set forth in the Separation Agreement.

**“Constellation Representation Letter”** means an officer’s certificate in which certain representations, warranties, and covenants are made on behalf of Constellation and its Affiliates in connection with the issuance of the Tax Opinion.

**“Constellation Separate Tax Return”** means any Tax Return that is required under applicable Law to be filed by any member of the Constellation Group, and that does not include any member of the Exelon Group, for a Pre-Distribution Period or a Straddle Period, whether or not such Tax Return is timely filed.

**“Constellation Tainting Act”** has the meaning prescribed in Section 2.02(b)(i)(A).

**“Constellation Tax Credit Carryforward”** means Tax credits described in Schedule A.

**“Contribution”** means the transfers by Exelon of the assets described in Article II of the Separation Agreement to Constellation in exchange for (i) the assumption or incurrence, as applicable, by Constellation and certain of its Subsidiaries of the Constellation Liabilities, and (ii) the issuance by Constellation to Exelon of shares of Constellation Common Stock, all as more fully described in the Separation Agreement and the Ancillary Agreements.

**“Deferred Tax Assets”** means, as of a given date, the amount of deferred Tax benefits that would be recognized as assets on a business enterprise’s balance sheet computed in accordance with GAAP.

**“Deferred Tax Liabilities”** means, as of a given date, the amount of deferred Tax liabilities that would be recognized as liabilities on a business enterprise’s balance sheet computed in accordance with GAAP.

**“Determination”** means (i) any Final Determination, or (ii) the payment of Tax by a Party (or its Affiliate) that is responsible for payment of that Tax under applicable Law, with respect to any item disallowed or adjusted by a Taxing Authority, as long as the responsible Party reasonably determines that no action should be taken to recoup that payment and the other Party agrees (such agreement not to be unreasonably withheld, conditioned or delayed).

**“Dispute”** has the meaning set forth in the Separation Agreement.

**“Distribution”** has the meaning set forth in the Separation Agreement.

**“Distribution Date”** has the meaning set forth in the Separation Agreement.

**“Effective Time”** has the meaning set forth in the Separation Agreement.

**“Employee Matters Agreement”** has the meaning set forth in the Separation Agreement.

**“Equity Award”** means restricted stock, stock options, restricted stock units, deferred stock units, performance shares or any other equity-based compensation awards granted, awarded or otherwise paid to a service provider by Exelon or a member of the Constellation Group, as the case may be.

**“Exelon”** has the meaning set forth in the preamble.

**“Exelon Business”** has the meaning set forth in the Separation Agreement.

**“Exelon Combined Group”** means (i) the Exelon Federal Consolidated Group, (ii) any other group of Persons that (A) includes at least one member of the Exelon Group and (B) that files Tax Returns on a combined, consolidated, unitary or similar basis, and (iii) any Person or group of Persons whose items of income, gain, loss or deduction are reflected on a single Tax Return filed by a member of the Exelon Group by reason of one or more of such Persons being disregarded as a separate entity for U.S. federal or applicable state and local income tax purposes.

**“Exelon Federal Consolidated Group”** has the meaning set forth in the recitals.

**“Exelon Group”** means all entities that are Affiliates of Exelon immediately after the Distribution, and entities that become Affiliates thereafter.

**“Exelon Representation Letter”** means an officer’s certificate in which certain representations, warranties and covenants are made on behalf of Exelon and its Affiliates in connection with the issuance of the Tax Opinion.

**“Exelon Tainting Act”** has the meaning prescribed in Section 2.02(b)(i)(A).

**“Final Determination”** means the final resolution of liability for any Tax for a taxable period, including any related interest, penalties or other additions to tax, (i) by a decision, judgment, decree, or other order by a court of competent jurisdiction, which has become final and unappealable; (ii) by a final settlement with the IRS, closing agreement or accepted offer in compromise under Section 7121 or Section 7122 of the Code, or comparable agreement under the Law of other jurisdictions, including a “determination” as defined in Section 1313(a) of the Code or execution of an IRS Form 870AD; (iii) by any allowance of a Refund in respect of an overpayment of Tax, but only after the expiration of all periods during which such Refund may be recovered (including by way of offset) by the jurisdiction imposing such Tax; or (iv) by any other final resolution, including by reason of the expiration of the applicable statute of limitations or the execution of a pre-filing agreement with the IRS or other Taxing Authority.

“GAAP” means United States generally accepted accounting principles as in effect on the Distribution Date.

“Income Taxes” means any Taxes based upon, measured by, or calculated with respect to: (i) net income or profits or net receipts (including, but not limited to, any capital gains, minimum Tax or any Tax on items of Tax preference, but not including gross receipts, sales, use, real or personal property, transfer or similar Taxes) or (ii) multiple bases (including corporate or franchise, doing business and occupation taxes) if one or more bases upon which such Tax may be based, measured by, or calculated with respect to, is described in clause (i).

“Indemnified Party” has the meaning prescribed in Section 6.02.

“Indemnifying Party” has the meaning prescribed in Section 6.02.

“Interest Rate” means, with respect to any payment under this Agreement, a per-annum rate equal to the prime rate as published in The Wall Street Journal on the due date for such payment.

“IRS” means the United States Internal Revenue Service.

“IRS Ruling” means the private letter ruling issued to Exelon and addressing the tax consequences of any aspect of the Contribution or the Distribution.

“IRS Ruling Request” means the submission by Exelon to the IRS relating to the IRS Ruling, including any amendment or supplement to such IRS Ruling Request.

“Law” has the meaning set forth in the Separation Agreement.

“Liability Issue” has the meaning prescribed in Section 5.03(b).

“Non-Income Taxes” means any Taxes other than Income Taxes.

“Party” means each of Exelon and Constellation.

“Person” has the meaning set forth in the Separation Agreement.

“Post-Distribution Period” means any tax year or other taxable period beginning after the Distribution Date and, in the case of any Straddle Period, that part of the tax year or other taxable period that begins at the beginning of the day after the Distribution Date.

“Post-Distribution Ruling” has the meaning prescribed in Section 4.03(a).

“Pre-Distribution Period” means any tax year or other taxable period that ends on or before the Distribution Date and, in the case of any Straddle Period, that part of the tax year or other taxable period through the end of the day on the Distribution Date.

**“Principal Ancillary Agreements”** means the Employee Matters Agreement and the Transition Services Agreement.

**“Prior Tax Sharing Agreement”** means the Amended and Restated Tax Sharing Agreement dated as of September 1, 2010, by and between Exelon and certain of its Subsidiaries.

**“Proposed Acquisition Transaction”** means a transaction or series of transactions (i) as a result of which any of the Parties would merge or consolidate with any other Person, or (ii) as a result of which any Person or any group of Persons would (directly or indirectly) acquire, or have the right to acquire (through an option or otherwise), from any of the Parties or any of their Affiliates and/or one or more holders of their stock, respectively, any amount of stock of any of the Parties that would, when combined with any other changes in ownership of the stock of such Party during the Restricted Period, result in a shift of more than 40% of (a) the value of all outstanding shares of stock of such Party as of the Distribution Date, or (b) the total combined voting power of all outstanding shares of voting stock of such Party as of the Distribution Date. Notwithstanding the foregoing, a Proposed Acquisition Transaction shall not include (i) the adoption by a Party of, or the issuance of stock pursuant to, a stockholder rights plan or (ii) transactions that satisfy Safe Harbor VIII (relating to acquisitions in connection with a person’s performance of services, including Equity Awards granted to employees of members of the Exelon Group or the Constellation Group) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d). For purposes of determining whether and to what extent a transaction constitutes an indirect acquisition for purposes of the first sentence of this definition, any recapitalization or other action resulting in a shift of voting power or any redemption or repurchase of shares of stock shall be treated as an indirect acquisition of shares of stock by the benefitted or non-exchanging stockholders. Notwithstanding the previous sentence, the effect of any such recapitalization, other action, or redemption or repurchase (directly or indirectly) of shares shall take into account any applicable IRS ruling received by one or more of the Parties with respect thereto. This definition and the application thereof is intended to monitor compliance with Section 355(e) of the Code and the Treasury Regulations promulgated thereunder and shall be interpreted accordingly by the Parties in good faith.

**“Refund”** has the meaning prescribed in [Section 2.06\(a\)](#).

**“Relative Values”** means the relative equity values of Exelon and Constellation determined in accordance with the following: (a) for Exelon, such value shall be determined by multiplying (i) the average value of Exelon’s common stock for the three Business Days following the Distribution Date, computed for each day by averaging the intraday high and intraday low trading price, by (ii) the total number of shares of Exelon common stock outstanding on such date, and (b) for Constellation, such value shall be determined by multiplying (i) the average value of the Constellation common stock for the three Business Days following the Distribution Date, computed for each day by averaging the intraday high and intraday low trading price, by (ii) the total number of shares of Constellation common stock outstanding on such date.

**“Representation Letters”** means the Exelon Representation Letter and the Constellation Representation Letter.

**“Responsible Party”** has the meaning prescribed in [Section 5.03\(a\)](#).

**“Restricted Action”** has the meaning prescribed in Section 4.03(a).

**“Restricted Period”** means the period beginning at the Effective Time and ending on the two-year anniversary of the day after the Distribution Date.

**“Separation Agreement”** has the meaning set forth in the preamble.

**“Separation Taxes”** means any federal, state, and local Income Tax imposed on or assessed against Exelon or the Exelon Combined Group in connection with the Contribution and Distribution that would not have been imposed or assessed had the Contribution and Distribution not occurred.

**“Straddle Period”** means any taxable period beginning on or before the Distribution Date and ending after the Distribution Date.

**“Subsidiary”** has the meaning set forth in the Separation Agreement.

**“Tainting Act”** means any act, or failure or omission to act, by any Party (or any of its Subsidiaries) following the Distribution that results in any member of the Exelon Group or any member of the Constellation Group being responsible for Separation Taxes pursuant to a Final Determination, regardless of whether such act or failure or omission to act (i) is covered by a ruling from the IRS or an Unqualified Tax Opinion, or (ii) occurs during or after the Restricted Period.

**“Tax”** and **“Taxes”** means any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers’ compensation, unemployment, disability, property, ad valorem, value added, stamp, excise, severance, occupation, service, sales, use, license, lease, transfer, import, export, alternative minimum, estimated or other tax (including any fee, assessment, or other charge in the nature of or in lieu of any tax), imposed by any governmental entity or political subdivision thereof, and any interest, penalty, additions to tax, or additional amounts in respect of the foregoing.

**“Tax Attributes”** means all federal, state and local Tax attributes, including but not limited to net operating losses, capital losses, tax credit carryovers, earnings and profits, overall foreign losses, previously taxed income, separate limitation losses, deductions or other comparable items, and assets basis, that could affect a Tax liability for a past or future taxable period.

**“Tax Benefit”** means any refund, credit, or other reduction in Tax payments otherwise required to be made to a Taxing Authority, including for the avoidance of doubt, any actual Tax savings if, as and when realized arising from a step-up in Tax basis or an increase in a Tax Attribute.

**“Tax Controversy”** has the meaning prescribed in Section 5.01(a).

**“Tax Item”** means any item of income, gain, loss, deduction, credit, recapture of credit, or any other item (including the basis or adjusted basis of property) which increases or decreases Income Taxes paid or payable in any taxable period.

“**Tax Opinion**” means the opinion rendered by Sidley Austin LLP, with respect to certain Tax aspects of the Distribution.

“**Tax Proceeding**” means any audit, assessment of Taxes, pre-filing agreement, other examination by any Taxing Authority, proceeding, appeal of a proceeding or litigation relating to Taxes, whether administrative or judicial, including proceedings relating to competent authority determinations.

“**Tax Return**” means any return, report, certificate, form, filing, questionnaire or other document required to be filed with or otherwise provided to any Taxing Authority, including requests for extensions of time, filings made with estimated Tax payments, claims for Refund or amended returns, any related or supporting information or schedule attached thereto that may be filed or provided for any taxable period in connection with any Tax or Taxes (whether or not a payment is required to be made with respect to such filing).

“**Tax-Free Status of the Transactions**” means the tax-free treatment accorded to certain of the Transactions as set forth in the IRS Ruling and the Tax Opinion.

“**Taxing Authority**” means any national, municipal, governmental, state, federal or other body, or any quasi-governmental or private body, having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

“**Transactions**” has the meaning set forth in the Separation Agreement.

“**Transfer Taxes**” has the meaning prescribed in Section 2.02(c).

“**Treasury Regulations**” means the final and temporary (but not proposed) income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“**Unqualified Tax Opinion**” means a “will” opinion, without substantive qualifications, of an Advisory Firm, which Advisory Firm is reasonably acceptable to Exelon, to the effect that a transaction will not affect the Tax-Free Status of the Transactions.

## **ARTICLE II RESPONSIBILITY FOR TAXES**

### **2.01 Responsibility and Indemnification for Taxes.**

(a) From and after the Distribution Date, without duplication, each of Exelon and Constellation shall be responsible for, and shall pay its respective share of the liability for Taxes of Exelon, Constellation, and their respective Affiliates, as provided in this Agreement. Exelon and its Affiliates shall indemnify and hold harmless Constellation and its Affiliates from and against any Taxes for which Exelon is responsible pursuant to this Agreement, and Constellation and its Affiliates shall indemnify and hold harmless Exelon and its Affiliates from and against any Taxes for which Constellation is responsible pursuant to this Agreement.

(b) Except as otherwise provided in this Agreement, all references to Taxes or Tax liabilities in this Agreement refer to the actual amounts of Taxes paid or due and do not apply to (i) the utilization, elimination, or adjustment of any Tax Attribute, or (ii) items or adjustments to items shown solely on a Party's balance sheet or other financial statement. There shall be no adjustments, payments, or obligations among the Parties made pursuant to this Agreement for any gains or losses with respect to amounts shown on a Party's balance sheet or other financial statements and not specifically allocated herein, including but not limited to ASC 740-10 reserves, Deferred Tax Assets, Deferred Tax Liabilities, and other Tax accounting entries.

(c) Payments to Taxing Authorities and between the Parties, as the case may be, shall be made in accordance with the provisions of this Agreement.

## **2.02 Responsibility for Taxes.**

### **(a) Generally**

#### **(i) Exelon.**

Except as set forth in Sections 2.02(a)(ii), 2.02(b), 2.02(c), 2.05(b) or 5.01(b), Exelon shall be liable for and shall pay or cause to be paid the following Taxes:

(A) Income Taxes (other than the Constellation Allocable Portion of such Income Taxes) due and payable in connection with Tax Returns for Pre-Distribution Periods and Straddle Periods that Exelon is required to file or cause to be filed pursuant to Section 3.01;

(B) Income Taxes due and payable in connection with Tax Returns for Post-Distribution Periods (other than Straddle Periods) that Exelon is required to file or cause to be filed pursuant to Section 3.01; and

(C) Non-Income Taxes (other than the Constellation Allocable Portion of such Non-Income Taxes) payable in connection with any other Tax Returns that Exelon is required to file or cause to be filed pursuant to Section 3.01.

#### **(ii) Constellation.**

Except as set forth in Sections 2.02(b), 2.02(c), 2.05(b) or 5.01(b) Constellation shall be liable for and shall pay or cause to be paid the following Taxes:

(A) Income Taxes due and payable in connection with Tax Returns for Pre-Distribution Periods and Straddle Periods that Constellation is required to file or cause to be filed pursuant to Section 3.01;

(B) Income Taxes due and payable in connection with Tax Returns for Post-Distribution Periods (other than Straddle Periods) that Constellation is required to file or cause to be filed pursuant to Section 3.01;

(C) Non-Income Taxes payable in connection with any other Tax Returns that Constellation is required to file or cause to be filed pursuant to Section 3.01;

(D) the Constellation Allocable Portion of any Income Taxes or Non-Income Taxes payable in connection with Tax Returns for Pre-Distribution Periods and Straddle Periods that Exelon is required to file or cause to be filed pursuant to Section 3.01; and

(E) the Constellation Allocable Audit Portion of any Income Taxes or Non-Income Taxes.

(iii) **Straddle Period Taxes.** Subject to Section 2.04, the responsibility for any Tax incurred in a Straddle Period shall be allocated between the Pre-Distribution Period and the Post-Distribution Period as if the relevant Person or Persons closed its financial accounting records as of the Distribution Date and determined the Tax attributable to the Pre-Distribution Period by applying the method of tax accounting that has historically been used for the business of such Person or Persons.

(b) **Separation Taxes**

(i) In the event that Separation Taxes become due and payable to a Taxing Authority pursuant to a Final Determination, then, notwithstanding anything to the contrary in this Agreement:

(A) if such Separation Taxes are attributable to a Tainting Act of any member of the Exelon Group or to a transaction after the Distribution Date involving the stock of any member of the Exelon Group (an "**Exelon Tainting Act**"), and are not also attributable to a Tainting Act of any member of the Constellation Group or to a transaction after the Distribution Date involving the stock of any member of the Constellation Group (a "**Constellation Tainting Act**"), then Exelon shall be responsible for such Separation Taxes;

(B) if such Separation Taxes are attributable to a Constellation Tainting Act, and are not also attributable to an Exelon Tainting Act, then Constellation shall be responsible for such Separation Taxes;

(C) if such Separation Taxes are attributable to both an Exelon Tainting Act and a Constellation Tainting Act, then such Separation Taxes shall be equitably apportioned between the Parties based upon their relative fault; provided that in the event the Parties cannot agree regarding their relative fault, the matter shall be resolved in accordance with Article VII; and

(ii) if such Separation Taxes are not attributable to an Exelon Tainting Act or a Constellation Tainting Act, then such Separation Taxes shall be apportioned between the Parties based upon their Relative Values.

(c) **Transfer Taxes.** Notwithstanding anything to the contrary herein, all transfer, documentary, sales, use, stamp, registration and other such similar Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement, the Separation Agreement or the Ancillary Agreements (“**Transfer Taxes**”) shall be paid 50% by Constellation and 50% by Exelon, and the Party required under applicable Law to file Tax Returns with respect to Transfer Taxes will file all necessary Tax Returns, and, if required by applicable Law, the non-preparing Party will, and will cause its Affiliates to, join in the execution of any such Tax Returns and other documentation; provided, however, that if the non-preparing Party fails to join in the execution of any such Tax Returns and other documentation, then the Party obligated to file such Tax Returns is authorized to execute such Tax Returns and other documentation on behalf of the non-preparing Party.

### **2.03 Timing Differences.**

(a) If pursuant to a Determination an Adjustment (i) increases the amount of liability for any Taxes for which a member of the Exelon Group is responsible hereunder and a Tax Benefit is made allowable to a member of the Constellation Group for any Post-Distribution Period, which Tax Benefit would not have arisen or been allowable but for such Adjustment, and which Tax Benefit reduces Taxes in respect of a Tax period for which any member of the Constellation Group is liable (and for which no member of the Exelon Group is liable) or (ii) increases the amount of liability for any Taxes for which a member of the Constellation Group is responsible hereunder and a Tax Benefit is made allowable to any member of the Exelon Group for any Pre-Distribution Period, which Tax Benefit would not have arisen or been allowable but for such Adjustment, and which Tax Benefit reduces Taxes in respect of a Tax period for which a member of the Exelon Group is liable (and for which no member of the Constellation Group is liable), then Constellation or Exelon, as the case may be, shall make a payment to either Exelon or Constellation, as appropriate, within forty-five (45) days of the date that such paying Party (or any member of the Exelon Group or Constellation Group, as applicable) actually receives such Tax Benefit (determined by comparing its Tax liability with and without the Tax consequences of the Adjustment), which payment shall not exceed the increase in the amount of liability for any Taxes resulting from such Adjustment, for which a member of the Exelon Group or Constellation Group, is responsible hereunder.

### **2.04 Allocation of Certain Income Taxes and Income Tax Items.**

(a) If Exelon, Constellation, or any of their respective Affiliates is permitted but not required under applicable federal, state, local or foreign Tax Laws to treat the Distribution Date as the last day of a taxable period, then, in accordance with Section 2.02(a)(iii), the Parties shall (or shall cause its Affiliates to) treat such day as the last day of a taxable period under such applicable Tax Law, and shall file or cause to be filed any elections necessary or appropriate to such treatment; provided that this Section 2.04(a) shall not be construed to require Exelon or Constellation to change its taxable year.

(b) Tax Attributes arising in a Pre-Distribution Period shall be allocated to the Exelon Group and Constellation Group in accordance with principles set forth in the Prior Tax Sharing Agreement, unless otherwise required by the Code and Treasury Regulations (and any applicable state, local, and non-U.S. Laws). Exelon and Constellation shall jointly determine the allocation of such Tax Attributes arising in Pre-Distribution Periods as soon as reasonably practicable following the Distribution Date, and hereby agree to compute all Taxes for Post-Distribution Periods consistently with that determination unless otherwise required by a Determination.

(c) The Parties agree that, in connection with the Distribution, Exelon's current and accumulated earnings and profits will be allocated between Exelon and Constellation based on their relative fair market values at the time of the Distribution in accordance with Treasury Regulation § 1.312-10.

#### **2.05 Treatment of Equity Awards and Compensatory Payments.**

(a) For all Post-Distribution Periods, solely the Party (or its Subsidiary) that then employs or engages the relevant individual or, if such individual is not then employed or engaged by a Party, the Party (or its Subsidiary) that most recently employed or engaged such individual, at the time of the vesting, exercise, disqualifying disposition, payment or other relevant taxable event, as appropriate, in respect of the Equity Awards and all other nonqualified deferred compensation plans and Non-ERISA Benefit Arrangements described in Sections 3.3 and Article V the Employee Matters Agreement ("**Other Compensatory Payments**"), shall be entitled to claim any Income Tax deduction arising after the Distribution Date in respect of such Equity Awards and Other Compensatory Payments on its respective Tax Return.

(b) The Party (or its Subsidiary) that claims the deduction described in Section 2.05(a) shall be responsible for all applicable Taxes (including withholding and excise taxes) and shall satisfy, or shall cause to be satisfied, all applicable Tax reporting obligations in respect of the Equity Awards and Other Compensatory Payments that gives rise to the deduction. The Parties shall cooperate (and shall cause their Subsidiaries to cooperate) so as to permit the Party (or Subsidiary thereof) claiming such deduction described in Section 2.05(a) to discharge any applicable Tax withholding and Tax reporting obligations, including the appointment of the Party claiming the deduction (or its Subsidiary) as the withholding and reporting agent if that Party (or any of its Subsidiaries) is not otherwise required or permitted to withhold and report under applicable Law.

#### **2.06 Tax Refunds and Certain Tax Attributes.**

(a) Except as otherwise provided in this Article II, the benefit of any Tax credits, Tax Attributes, and any refund or credit of any overpayment of Taxes or estimated Tax liabilities (each, a "**Refund**"), including any corresponding benefit arising out of or related to any Tax liability that is the subject of this Agreement, will remain with the Party entitled to the benefit under applicable Tax Law. No payments shall be made between the Parties to account for such adjustment.

(b) Except as provided in Section 2.07, Exelon shall be entitled to all Refunds for Taxes for which Exelon is responsible pursuant to Article II, and Constellation shall be entitled to (i) all Refunds for Taxes for which Constellation is responsible pursuant to Article II and (ii) the amount of any actual reduction in the cash Tax liability of Exelon or its Affiliates following the Distribution Date to the extent attributable to the utilization of Constellation Tax Credit Carryforwards. A Party receiving a Refund or the benefit of a Constellation Tax Credit Carryforward to which the other Party is entitled pursuant to this Agreement shall (x) notify the other Party within thirty (30) days of the Receipt of such Refund (or the reduction in any Tax payment as a result of any Constellation Tax Credit Carryforward) and (y) pay the amount to which such other Party is entitled within forty-five (45) days after the receipt of the Refund or the utilization of such Constellation Tax Credit Carryforward. Each Party shall cooperate in good faith to secure any Refunds for Taxes to which the other Party may be entitled; provided, however, that Exelon may, in its reasonable discretion, determine not to seek a Refund on behalf of Constellation if obtaining such Refund would require any member of the Exelon Group to file an amended Tax Return.

(c) In the event of an Adjustment relating to Taxes for which one Party is responsible pursuant to Article II which would have given rise to a Refund but for an offset against the Taxes for which the other Party is or may be responsible pursuant to Article II (the “**Benefited Party**”), then the Benefited Party shall pay to the other Party, within forty-five (45) days of the Determination of such Adjustment an amount equal to the lesser of (i) the amount of such hypothetical Refund or (ii) the amount of such reduction in the Taxes of the Benefited Party, in each case, plus interest at the Interest Rate on such amount for the period from the filing date of the Tax Return that would have given rise to such Refund to the payment date.

(d) Notwithstanding Section 2.06(a), to the extent that a Party applies or causes to be applied an overpayment of Taxes as a credit toward or a reduction in Taxes otherwise payable (or a Taxing Authority requires such application in lieu of a Refund) and such overpayment of Taxes, if received as a Refund, would have been payable by such Party to the other Party pursuant to this Section 2.06, such Party shall pay such amount to the other Party no later than the due date of the Tax Return for which such overpayment is applied to reduce Taxes otherwise payable.

(e) To the extent that the amount of any Refund or Constellation Tax Credit Carryforward under this Section 2.06 or Section 2.07(b) (i), as applicable, is later reduced by a Taxing Authority or in a Tax Proceeding, such reduction (together with any corresponding interest, penalties, or additions to Tax) shall be allocated to the Party to which such Refund or Constellation Tax Credit Carryforward was allocated pursuant to this Section 2.06 or Section 2.07(b)(i), as applicable, and an appropriate adjusting payment shall be made.

## **2.07 Carrybacks.**

(a) The carryback of any loss, credit, or other Tax Attribute from any Post-Distribution Period shall be in accordance with the provisions of the Code and Treasury Regulations (and any applicable state, local, or non-U.S. Law).

(b)

(i) Subject to Section 2.07(c) and (d), in the event that any member of the Constellation Group realizes any loss, credit, or other Tax Attribute in a Post-Distribution Period of such member, such member may elect to carry back such loss, credit, or other Tax Attribute to a Pre-Distribution Period or Straddle Period of Exelon. Exelon shall cooperate with Constellation and such member in seeking from the appropriate Taxing Authority any Refund that reasonably would result from such carryback (including by filing an amended Tax Return) at Constellation's cost and expense; provided, however, that Exelon shall not be required to seek such Refund, and Constellation and such member shall not be permitted to seek or otherwise be entitled to such Refund, in each case to the extent that such Refund would reasonably be expected to materially adversely impact Exelon (including through an increase in Taxes or a loss or reduction of a Tax Attribute regardless of whether or when such Tax Attribute otherwise would have been used), without the prior written consent of Exelon, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, Constellation (or such member) shall be entitled to any Refund realized by any member of the Exelon Group or the Constellation Group resulting from such carryback.

(ii) Subject to Section 2.07(c) and (d), in the event that any member of the Exelon Group realizes any loss, credit or other Tax Attribute in a Post-Distribution Period of such member, such member may elect to carry back such loss, credit or other Tax Attribute to a Pre-Distribution Period or Straddle Period of such member. Constellation shall cooperate with Exelon and such member in seeking from the appropriate Taxing Authority any Refund that reasonably would result from such carryback (including by filing an amended Tax Return) at Exelon's cost and expense; provided, however, that Constellation shall not be required to seek such Refund and Exelon and such member shall not be permitted to seek or otherwise be entitled to such Refund, in each case to the extent that such Refund would reasonably be expected to materially adversely impact Constellation (including through an increase in Taxes or a loss or reduction of a Tax Attribute regardless of whether or when such Tax Attribute otherwise would have been used), without the prior written consent of Constellation, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, Exelon (or such member) shall be entitled to any Refund realized by any member of the Constellation Group or the Exelon Group resulting from such carryback.

(c) Except as otherwise provided by applicable Law, if any loss, credit or other Tax Attribute of the Exelon Business and the Constellation Business both would be eligible to be carried back or carried forward to the same Pre-Distribution Period (had such carryback been the only carryback to such taxable period), any Refund resulting therefrom shall be allocated between Exelon and Constellation proportionately based on the relative amounts of the Refunds to which the Exelon Business and the Constellation Business, respectively, would have been entitled had such carryback been the only carryback to such taxable period.

(d) To the extent the amount of any Refund under this Section 2.07 is later reduced by a Taxing Authority or a Tax Proceeding, such reduction (together with any corresponding interest, penalties, or additions to Tax) shall be allocated to the Party to which such Refund was allocated pursuant to this Section 2.07, and an appropriate adjusting payment shall be made.

## **2.08 Protective Section 336(e) Elections.**

(a) Exelon and Constellation shall make a protective election with respect to Constellation under Section 336(e) of the Code (and any similar election under state or local Law) with respect to the Distribution in accordance with Treasury Regulations Section 1.336-2(h) and (j) (and any applicable provisions under state and local Law) and shall fully cooperate in the timely completion and/or filings of such elections and any related filings or procedures (including filing or amending any Tax Returns to implement an election that becomes effective). This Section 2.08(a) is intended to constitute a binding, written agreement to make an election under Section 336(e) of the Code with respect to the Distribution.

(b) Notwithstanding anything to the contrary herein, in the event that the election contemplated in Section 2.08(a) is made and becomes effective, then the Parties shall share in any Tax Benefit derived as a result of such election in accordance with the Parties' relative responsibility for such Taxes under this Article II, and payments shall be made between the Parties, if necessary.

(c) Exelon and Constellation shall cooperate in good faith in order to determine whether to make a protective election under Section 336(e) of the Code (and any similar election under state or local Law) with respect to any subsidiary of Constellation in accordance with Treasury Regulations Section 1.336-2(h) and (j) (and any applicable provisions under state and local Law).

## **ARTICLE III TAX RETURNS AND INFORMATION EXCHANGE**

### **3.01 Tax Return Preparation Responsibility; Payment of Taxes Shown Thereon.**

(a) Except as provided in Section 3.01(b), Exelon shall prepare and timely file all Tax Returns for Pre-Distribution Periods for Exelon and its Affiliates, including Constellation and its Affiliates, and all Tax Returns for Straddle Periods for all members of the Exelon Group. In connection with each Tax Return that is required under this Agreement to be filed by Exelon for Pre-Distribution Periods or Straddle Periods, Constellation shall timely furnish to Exelon such Tax information and documents as Exelon may reasonably request.

(b) Constellation and its Affiliates shall prepare and timely file all Constellation Separate Tax Returns, including any such Tax Return with respect to a Pre-Distribution Period. If any Constellation Separate Tax Return relates in whole or in part to any Pre-Distribution Period, Constellation shall provide Exelon with a copy of such Tax Return at least sixty (60) days prior to its due date. Exelon shall notify Constellation of any disagreement within twenty (20) days of Exelon's receipt of such Tax Return. Any dispute shall be resolved pursuant to the procedures provided by this Agreement.

(c) Except at the written direction of Exelon or to the extent permitted pursuant to Section 2.07, after the date of the Distribution, Constellation shall not file (or allow any Affiliate of Constellation to file) any amended Tax Return or Refund claim for any Pre-Distribution Periods.

(d) Exelon (and its Affiliates) shall be responsible for remitting payment of any Taxes shown on a Tax Return which Exelon (or any of its Affiliates) is responsible for filing pursuant to this Agreement. Constellation (and its Affiliates) shall be responsible for remitting payment of any Taxes shown on a Tax Return which Constellation (or any of its Affiliates) is responsible for filing pursuant to this Agreement.

(e) If Exelon (or any of its Affiliates) remits a Tax payment, but Constellation (or any of its Affiliates) is responsible pursuant to Article II for all or a portion of the Tax shown on the applicable Tax Return, then Constellation shall timely pay to Exelon that portion of the Tax for which Constellation (or any of its Affiliates) is responsible. Such payments shall be requested and made in accordance with the notice and payment provisions contained in Article VI. Nothing in this Section 3.01 shall affect the allocation of responsibility for Taxes as set forth in Article II.

### **3.02 Certain Items Related to Tax Return Preparation.**

(a) All Tax Returns relating to a Pre-Distribution Period shall be prepared and filed by the specified party in a manner consistent with past Tax reporting practices of the Exelon Group or the Constellation Group, as applicable.

(b) Unless otherwise required by a Taxing Authority, the Parties hereby agree to prepare and file all Tax Returns, and to take all other actions, in a manner consistent with this Agreement, the Separation Agreement, the Principal Ancillary Agreements, applicable Law, the Tax Opinion, any Representation Letter, the IRS Ruling, and the IRS Ruling Request. All Tax Returns shall be filed on a timely basis (taking into account applicable extensions) by the party responsible for filing such Tax Returns under this Agreement; provided, however, that if a Tax Return is to be signed by an officer of an entity different from the party responsible for filing such Tax Return, the appropriate Party shall have (or cause its Affiliate to have) the appropriate officer sign such Tax Return promptly after presentation thereof for signature.

(c) Except as otherwise specifically provided for in this Agreement (including Section 2.06 and Sections 3.02(a) and (b)), each Party shall have the exclusive right, in its reasonable discretion, with respect to any Tax Return for which it is responsible for the filing thereof pursuant to this Agreement, to determine (i) the manner in which such Tax Return shall be prepared and filed, including the accounting methods, positions, conventions and principles of taxation to be used and the manner in which any Tax Item shall be reported; (ii) whether any extensions may be requested; (iii) the election(s) that will be made by Exelon, Constellation, or any of their Affiliates on such Tax Return; (iv) whether any amended Tax Return shall be filed; (v) whether any claim for Refund shall be made; (vi) whether any Refund shall be paid by way of refund or credited against any liability for the related Tax; and (vii) whether to retain outside firms to prepare or review such Tax Returns.

(d) Exelon shall advise Constellation within five (5) Business Days of the filing of any amended Tax Return relating to the Exelon Combined Group for a Pre-Distribution Period if such amended Tax Return could reasonably be expected to affect any Tax Attribute of any member of the Constellation Group for any Post-Distribution Period.

(e) Nothing in this Agreement shall be construed as a guarantee or representation of the existence or amount of any loss, credit, carryforward, basis, or other Tax Item or Tax Attribute, whether past, present, or future, of Exelon, Constellation, or their respective Affiliates.

**ARTICLE IV**  
**TAX TREATMENT OF THE DISTRIBUTION**

**4.01 Representations.**

(a) **Constellation.** Constellation hereby represents and warrants to Exelon as of the date hereof and as of the Distribution Date as follows:

(i) **Tax-Free Status.** Constellation has no plan or intention of taking any action, or failing or omitting to take any action, or knows of any circumstance, that could reasonably be expected to (i) cause the Contribution and the Distribution to fail to qualify as a reorganization within the meaning of Sections 368(a)(1)(D) and 355 of the Code or (ii) cause any representation or factual statement made in this Agreement, the Separation Agreement, the Principal Ancillary Agreements, the Tax Opinion, the IRS Ruling, or any Constellation Representation Letter, as applicable, to be untrue in a manner that would have an adverse effect on the qualification of the Contribution and the Distribution as a reorganization within the meaning of Sections 368(a) (1)(D) and 355 of the Code or the tax treatment described in the Tax Opinion or the IRS Ruling.

(ii) **Plan or Series of Related Transactions.**

(A) To the knowledge of Constellation and the management of Constellation, neither the Distribution nor any related transactions are part of a plan (or series of related transactions) pursuant to which a Person will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of Sections 355(d) and (e) of the Code) in Constellation or any successor to Constellation.

(B) Constellation has no plan or intention to participate in, facilitate, undertake, or otherwise permit any acquisition of Constellation after the Distribution pursuant to which a direct or indirect acquisition of stock of Constellation would occur, which would result in a direct or indirect acquisition of stock representing a 50% or greater interest (within the meaning of Sections 355(d) and 355(e) of the Code) in Constellation or any successor to Constellation.

(C) Constellation and its Affiliates have no plan or intention to redeem, purchase, or otherwise reacquire 20% or more of the capital stock of Constellation in one or more transactions following the Distribution Date.

(D) Constellation and its Affiliates have no plan or intention to (i) sell, exchange, distribute, or otherwise dispose of, directly or indirectly, other than in the ordinary course of business, all or a substantial part of the assets of any Active Business; (ii) discontinue or cause to be discontinued the active conduct of any Active Business; or (iii) cause the occurrence of any restructuring pursuant to which Constellation ceases to be treated as conducting any Active Business.

(b) **Exelon.** Exelon hereby represents and warrants to Constellation as of the date hereof and as of the Distribution Date as follows:

(i) **Tax-Free Status.** Exelon has examined the IRS Ruling, each IRS Ruling Request, the Tax Opinion and any other materials delivered or deliverable in connection with the rendering of the Tax Opinion, and Exelon has no plan or intention of taking any action, or failing or omitting to take any action, or knows of any circumstance, that could reasonably be expected to (i) cause the Contribution and the Distribution to fail to qualify as a reorganization within the meaning of Sections 368(a)(1)(D) and 355 of the Code, or (ii) cause any representation or factual statement made in the Separation Agreement, this Agreement, the other Ancillary Agreements, the Tax Opinion, or any Exelon Representation Letter, as applicable, to be untrue in a manner that would have an adverse effect on the qualification of the Contribution and the Distribution as a reorganization within the meaning of Sections 368(a)(1)(D) and 355 of the Code or the tax treatment described in the Tax Opinion or the IRS Ruling.

(ii) **Plan or Series of Related Transactions.**

(A) To the knowledge of Exelon and the management of Exelon, neither the Distribution nor any related transactions are part of a plan (or series of related transactions) pursuant to which a Person will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of Sections 355(d) and (e) of the Code) in Exelon or any successor to Exelon.

(B) Exelon has no plan or intention to participate in, facilitate, undertake or otherwise permit any acquisition of Exelon after the Distribution pursuant to which a direct or indirect acquisition of stock of Exelon would occur, which would result in a direct or indirect acquisition of stock representing a 50% or greater interest (within the meaning of Sections 355(d) and 355(e) of the Code) in Exelon or any successor to Exelon.

(C) Exelon and its Affiliates have no plan or intention to redeem, purchase or otherwise acquire 20% or more of Exelon's capital stock in one or more transactions following the Distribution Date.

(D) Exelon and its Affiliates have no plan or intention to (i) sell, exchange, distribute, or otherwise dispose of, directly or indirectly, other than in the ordinary course of business, all or a substantial part of the assets of any Active Business; (ii) discontinue or cause to be discontinued the active conduct of any Active Business; or (iii) cause the occurrence of any restructuring pursuant to which Exelon ceases to be treated as conducting any Active Business.

#### **4.02 Covenants.**

(a) The Parties shall not, and shall cause their Affiliates not to, take any action or fail to take any action, where such action or failure would be inconsistent with or have an adverse effect on the qualification of the Contribution and the Distribution as a reorganization within the meaning of Sections 368(a)(1)(D) and 355 of the Code or the tax treatment described in the Tax Opinion or the IRS Ruling.

(b) *Actions Consistent with Representations and Covenants.*

(i) Constellation shall not, and shall not permit any of its Affiliates to, take any action or fail to take any action, where such action or failure to act would be inconsistent with or cause to be materially untrue any material, information, covenant, or representation in the Separation Agreement, this Agreement, the other Ancillary Agreements, the Tax Opinion, the IRS Ruling, the IRS Ruling Request or any Constellation Representation Letter.

(ii) Exelon shall not, and shall not permit any of its Affiliates to, take any action or fail to take any action, where such action or failure to act would be inconsistent with or cause to be materially untrue any material, information, covenant, or representation in the Separation Agreement, this Agreement, the other Ancillary Agreements, the Tax Opinion, the IRS Ruling, the IRS Ruling Request, or any Exelon Representation Letter.

(c) Notwithstanding anything herein to the contrary, but subject to Section 4.03(a), during the Restricted Period, Constellation shall not (and shall not allow any of its subsidiaries or Affiliates to):

(i) allow any Proposed Acquisition Transaction to occur;

(ii) merge or consolidate with any other Person or dissolve, liquidate or partially liquidate (other than a wholly owned subsidiary of Constellation merging or consolidating with Constellation or another wholly owned subsidiary of Constellation);

(iii) approve or allow the discontinuance, cessation, or sale or other transfer (to an Affiliate or otherwise) of any Active Business conducted by Constellation or its Affiliates, as applicable;

(iv) sell or otherwise dispose of more than 40% of its consolidated gross or net assets or allow the sale or other disposition (to an Affiliate or otherwise) of more than 40% of the consolidated gross or net assets of Constellation (in each case, excluding sales in the ordinary course of business, sales the net cash proceeds (taking into account any Taxes payable) of which are reinvested in other assets (including pursuant to an exchange under Section 1031 of the Code) and sales the net cash proceeds (taking into account any Taxes payable) of which are used to repay indebtedness, and measured based on fair market values as of the date of the Distribution or other transaction);

(v) amend its certificate of incorporation or take any similar action that affects the rights of stockholders under the certificate of incorporation;

(vi) purchase, directly or through any Affiliate, any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Revenue Procedure 96-30 (as in effect prior to the amendment of such Revenue Procedure by Revenue Procedure 2003-48);

(vii) take any action or fail to take any action, or permit any of its Affiliates to take any action or fail to take any action, that is inconsistent with the representations and covenants made in the Representation Letters, or that is inconsistent with the Tax Opinion; nor

(viii) enter into an arrangement or agreement to do any of the foregoing.

#### 4.03 Procedures Regarding Opinions.

(a) Constellation shall be permitted to take or allow the actions described in Section 4.02 (each, a “**Restricted Action**”) if, prior to taking or allowing any such Restricted Action, Constellation shall (1) have received written consent from Exelon, which consent may be withheld in the sole discretion of Exelon, (2) have received a favorable private letter ruling from the IRS that confirms that such Restricted Action will not, when considered together with any other relevant transactions, result in Separation Taxes (a “**Post-Distribution Ruling**”), in form and substance satisfactory to Exelon in its discretion, which discretion shall be reasonably exercised in good faith solely to ensure that the Restricted Action does not result in the imposition on either Party, or responsibility for payment by either Party, of Separation Taxes or (3) have received an Unqualified Tax Opinion that confirms that such Restricted Action will not result in Separation Taxes, when considered together with any other relevant transactions, in form and substance satisfactory to Exelon in its discretion, which discretion shall be reasonably exercised in good faith solely to ensure that the Restricted Action does not result in the imposition on either Party, or responsibility for payment by either Party, of Separation Taxes. Constellation shall provide a copy of the Post-Distribution Ruling or the Unqualified Tax Opinion described in this Section 4.03(a) to Exelon as soon as practicable prior to taking or failing to take any Restricted Action. Exelon’s evaluation and approval of such Post-Distribution Ruling or Unqualified Tax Opinion shall not be unreasonably withheld or delayed; provided, however, that Exelon’s evaluation of such Post-Distribution Ruling or Unqualified Tax Opinion may consider, among other factors, the appropriateness of any underlying assumptions, representations, and covenants made in connection with such Post-Distribution Ruling or Unqualified Tax Opinion. Constellation shall bear all costs and expenses of requesting and securing any such Post-Distribution Ruling or Unqualified Tax Opinion and shall reimburse Exelon for all reasonable out-of-pocket costs and expenses that Exelon may incur in seeking to obtain or evaluate any such Post-Distribution Ruling or Unqualified Tax Opinion.

(b) If Constellation notifies Exelon that it desires to take or permit a Restricted Action, Exelon shall reasonably cooperate with Constellation and use its commercially reasonable efforts to seek to obtain, as expeditiously as possible, a Post-Distribution Ruling or an Unqualified Tax Opinion for the purpose of permitting Constellation to take the Restricted Action unless Exelon shall have waived the requirement to obtain such Post-Distribution Ruling or Unqualified Tax Opinion. If such a Post-Distribution Ruling is to be sought, Exelon shall apply for such ruling and Exelon and Constellation shall jointly control the process of obtaining such ruling. In no event shall Exelon be required to file any ruling request under this Section 4.03 unless Constellation represents that (i) it has reviewed such ruling request, and (ii) all information and representations, if any, relating to any member of the Constellation Group, contained in such ruling request documents are (subject to any qualifications therein) true, correct, and complete. Constellation shall reimburse Exelon for all costs and expenses incurred by the Exelon Group in applying for and obtaining a Post-Distribution Ruling or an Unqualified Tax Opinion requested by Constellation within forty-five (45) days after receiving any invoice from Exelon therefor.

(c) If Exelon requests a Post-Distribution Ruling or other guidance pursuant to Section 4.03: (A) Exelon shall keep Constellation reasonably informed in a timely manner of all material actions taken or proposed to be taken by Exelon in connection therewith; (B) Exelon shall (i) reasonably in advance of the submission of any documents relating to the ruling provide Constellation with a draft thereof, (ii) reasonably consider Constellation's comments to such draft, (iii) provide Constellation with a final copy of any documents relating to the ruling, (iv) provide Constellation with notice reasonably in advance of, and Constellation shall have the right to attend, any meetings with the Taxing Authority (subject to the approval of the Taxing Authority) that relate to such ruling, and (v) provide Constellation with a copy of such ruling.

**4.04 Enforcement.** The Parties acknowledge that irreparable harm would occur in the event that any of the provisions of this Article IV were not performed in accordance with their specific terms or were otherwise breached. The Parties agree that, in order to preserve the qualification of the Contribution and the Distribution as a reorganization within the meaning of Sections 368(a)(1)(D) and 355 of the Code, injunctive relief is appropriate to prevent any violation of the foregoing covenants; provided, however, that injunctive relief shall not be the exclusive legal or equitable remedy for any such violation.

## ARTICLE V COOPERATION AND EXCHANGE OF INFORMATION

### 5.01 Cooperation.

(a) Notwithstanding anything to the contrary in the Separation Agreement or the Ancillary Agreements, Exelon and Constellation shall cooperate (and shall cause each of their respective Affiliates to cooperate) fully at such time and to the extent reasonably requested by the other Party in connection with the preparation and filing of any Tax Return or the conduct of any Tax Controversy, including any audit, protest, or claim for Refund, competent authority proceeding, or litigation in Tax court or any other court of competent jurisdiction (a "**Tax Controversy**") (including providing a power of attorney) concerning any issues or any other matter contemplated under this Agreement or otherwise as reasonably requested by the other Party. Each Party shall make its employees and facilities available on a mutually convenient basis to facilitate such cooperation.

(b) Notwithstanding anything to the contrary in this Agreement, if a Party materially fails to comply with any of its obligations set forth in this Section 5.01, upon reasonable request and notice by the other Party, the non-performing Party shall (i) reimburse the other Party for any internal or incremental costs incurred by such other Party in having its employees or agents view or obtain such material, and (ii) to the extent such failure results in the imposition of additional Taxes or the inability to obtain a Refund, be liable in full for such additional Taxes or failure to obtain a Refund.

## 5.02 Retention of Records.

(a) The Parties and their Affiliates shall retain and provide to one another on demand books, records, documentation, information, or other materials (including computer data) relating to any Tax Return, or any supplemental information necessary or reasonably helpful to support any position taken therein until the later of (x) the expiration of the applicable statute of limitations (giving effect to any extension, waiver, or mitigation thereof) or (y) in the event any claim has been made under this Agreement for which such information is relevant, the occurrence of a Final Determination with respect to such claim.

(b) The Parties shall retain and make available to one another and to Taxing Authority, records and documentation that specifically include information regarding the amount, basis, and fair market value of all assets exchanged in the Contribution, and relevant facts regarding any liabilities assumed or extinguished as part of Contribution, pursuant to Treasury Regulation Section 1.355-5(d).

(c) If at any time after the Distribution Date a Party proposes to destroy materials or information required to be retained pursuant to Section 5.02(a), it shall first notify the other Party in writing and such other Party shall be entitled to receive such materials or information proposed to be destroyed if such materials or information relate to the other Party or any of its Affiliates or any assets held by the other Party's or any of its Affiliates.

## 5.03 Contest Provisions.

(a) The Party responsible for Taxes under Article II (the "**Responsible Party**") shall, with respect to a Tax Return, have the exclusive right to control, contest and represent the interests of Exelon, Constellation, and their respective Affiliates in any Tax Controversy related to such Tax Return; provided, however, that Exelon shall in all events be the Responsible Party with respect to any Tax Return reflecting Separation Taxes. Such right to control shall include the right, in the Responsible Party's reasonable discretion, to waive or extend any statute of limitations in connection with any Tax Controversy and to resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of any such Tax Controversy; provided, however, that (i) at the request of Exelon or at Constellation's option, Constellation shall have the right, at its own expense, to reasonably participate (to the extent allowed by Law) in the contest of a Tax Controversy relating to Separation Taxes and Taxes described in Sections 2.02(a)(i)(A) and (C) and (ii) at Exelon's option, Exelon shall have the right, at its own expense, to reasonably participate (to the extent allowed by Law) in the contest of a Tax Controversy relating to Taxes described in Sections 2.02(a)(ii)(A).

(b) Exelon shall use reasonable efforts to keep Constellation advised as to the status of Tax Controversies involving (i) any issue that relates to a Tax of any member of the Constellation Group or that could reasonably be expected to give rise to a liability of Constellation or any of its Affiliates under this Agreement (in each case, a "**Liability Issue**") or (ii) that could reasonably be expected to affect any Tax Attribute of any member of the Constellation Group for any Post-Distribution Period (an "**Attribute Issue**"). Exelon shall promptly furnish to Constellation copies of any inquiries or requests for information from any Taxing Authority or any other administrative, judicial, or other governmental authority concerning any Liability Issue or Attribute Issue pertaining to Constellation. Exelon shall use reasonable efforts to provide the information described in this Section 5.03(b) to Constellation no later than ten (10) Business Days after becoming aware of, or in possession of, such information.

(c) Except as otherwise set forth in Section 5.03(a), any costs and expenses incurred by a Responsible Party in connection with a Tax Controversy shall be borne solely by the Responsible Party; provided, however, that Constellation shall reimburse Exelon for its share of any reasonable third party costs and expenses borne by Exelon or its Affiliates in connection with Tax Controversies relating to Taxes described in Section 2.02(a)(i) (A) and (C). For purposes of this Section 5.03(c), Constellation's share of third party costs and expenses shall be determined by reference to the Constellation Allocable Audit Portion of the total amount Taxes due as a result of such Tax Controversy.

#### **5.04 Reasonable Participation; Information Sharing.**

(a) In the event that Constellation elects or is required to participate in the defense of a Tax Controversy pursuant to Section 5.03(a), Exelon shall (i) provide Constellation with notice at least ten (10) Business Days in advance of any proceeding relating to such Tax Controversy, and (ii) consult in good faith with Constellation on the resolution of the Tax Controversy and on any written submissions in connection with such Tax Controversy.

(b) Exelon shall advise Constellation in the event that Exelon reasonably determines that a Determination of Tax relating to the Exelon Combined Group may affect any Liability Issue or Attribute Issue within five (5) Business Days after such Determination.

#### **5.05 Information for Shareholders.**

(a) Exelon shall provide each shareholder that receives Constellation stock pursuant to the Distribution with the information necessary for such shareholder to comply with the requirements of Section 355 of the Code and the Treasury Regulations thereunder with respect to statements that such shareholders must file with their federal income Tax Returns demonstrating the applicability of Section 355 of the Code to the Distribution.

(b) Exelon shall make available on its website the information required by Section 6045B of the Code with respect to the effect of the Distribution on the basis of Exelon and Constellation stock in the hands of a U.S. taxpayer.

### **ARTICLE VI INDEMNITY OBLIGATIONS AND PAYMENTS**

#### **6.01 Indemnity Obligations.** In addition to the obligations set forth in Article II,

(a) The Exelon Group shall indemnify and hold harmless Constellation and any member of the Constellation Group from and against any liability, cost, or expense, including, without limitation, any fine, penalty, interest, charge, or accountant's fee, arising out of fraudulent or negligent preparation of any Tax Return or claim for Refund filed by Exelon or any of its Affiliates for any period during which Constellation or any member of the Constellation Group was or has been a member of the Exelon Combined Group, or arising out of the untimely provision of information required to be provided under this Agreement.

(b) The Constellation Group shall indemnify and hold harmless Exelon and any member of the Exelon Group from and against any liability, cost, or expenses, including, without limitation, any fine, penalty, interest, charge, or accountant's fee, arising out of fraudulent or negligent information, workpapers, documents, and other items prepared by Constellation or any Affiliate of Constellation used in the preparation of any Tax Return or claim for Refund filed by Exelon or any Affiliate of Exelon for any period during which Constellation or any Affiliate of Constellation was or has been a member of the Exelon Combined Group, or arising out of the untimely provision of information required to be provided under this Agreement.

**6.02 Notice.** A Party making a claim for indemnification under this Agreement (the "**Indemnified Party**") shall provide the Party from whom such indemnification is sought (the "**Indemnifying Party**") with written notice of such claim describing such claim in reasonable detail and accompanied by reasonable documentation supporting such claim no later than twenty (20) calendar days after the Indemnified Party (i) files a Tax Return reporting Taxes due which are subject to reimbursement, or (ii) receives written notice from any Taxing Authority with respect to a Final Determination of Taxes that may be subject to indemnification under this Agreement; provided, however, that in the event that timely notice is not provided, the Indemnifying Party shall be relieved of its obligation to indemnify the Indemnified Party only to the extent that such delay results in actual increased costs or actual prejudice.

**6.03 Payment.** In the event that the Indemnifying Party is required to make a payment to the Indemnified Party pursuant to this Agreement, then to the extent not otherwise provided for in this Agreement or in the Separation Agreement, such payment shall be made according to this Section 6.03.

(a) All payments shall be made to the Indemnified Party or to the appropriate Taxing Authority as specified by the Indemnified Party within the time prescribed for such payment in this Agreement, or if no period is prescribed, within twenty (20) calendar days after delivery of written notice of payment owing together with a computation of the amounts due.

(b) Unless otherwise required by any Final Determination, the Parties agree that any payment made by one Party to the other Party (other than payments of interest and payment of After Tax Amounts pursuant to Section 6.03(c)) pursuant to this Agreement shall be treated for all Tax purposes as payments with respect to stock (dividend distributions or capital contributions, as the case may be) made immediately prior to the Distribution.

(c) If it is determined that the receipt or accrual of any payment made under this Agreement (other than payments of interest) is subject to any Tax, the Party making such payment shall be liable for (i) the After Tax Amount with respect to such payment, and (ii) interest at the Interest Rate on the amount of such Tax from the date such Tax is due through the date of payment of such After Tax Amount. The Party making a demand for payment pursuant to this Agreement and for a payment of an After Tax Amount with respect to such payment shall (i) separately specify and compute such After Tax Amount and (ii) make the demand for the After Tax Amount no later than 90 days following the demand for the payment to which such After Tax Amount relates.

(d) Any payment that is required to be made pursuant to this Agreement (i) by Constellation (or an Affiliate of Constellation) to Exelon (or an Affiliate of Exelon), or (ii) by Exelon (or an Affiliate of Exelon) to Constellation (or an Affiliate of Constellation), that is not made on or prior to the date that such payment is required to be made pursuant to this Agreement shall thereafter bear interest at the Interest Rate.

**ARTICLE VII  
DISPUTE RESOLUTION**

**7.01 Dispute Resolution.** All disputes, controversies, or claims arising under or in connection with this Agreement (including any dispute, controversy, or claim relating to the breach, termination, or validity thereof) between or among any of Exelon or its Affiliates and Constellation or its Affiliates shall be governed by Article X of the Separation Agreement or the procedures set forth in Section 7.02 as determined by the Parties. If the Parties cannot agree as to which procedure will govern such dispute, such dispute shall be resolved pursuant to Article X of the Separation Agreement. Each Party agrees that the procedures set forth in Article X of the Separation Agreement or Section 7.02, as applicable pursuant to this Section 7.01, shall be the sole and exclusive remedy in connection with any dispute, controversy, or claim relating to any of the foregoing matters.

**7.02 Procedures.** With respect to any dispute governed by this Section 7.02, the Parties shall mutually appoint (i) a “big four” accounting firm, (ii) a law firm that is nationally recognized as being expert in Tax matters, or (iii) any other accounting firm that is nationally recognized as being an expert in Tax matters (the “**Advisory Firm**”) to resolve such dispute. In this regard, the Advisory Firm shall make determinations with respect to the disputed items based solely on representations made by Exelon and Constellation and their respective representatives, and not by independent review, and shall function only as an expert and not as an arbitrator and shall be required to make a determination in favor of one Party only. The Parties shall require the Advisory Firm to attempt to resolve all disputes no later than sixty (60) days after the submission of such dispute to the Advisory Firm, but in no event later than the due date for the payment of Taxes or the filing of the applicable Tax Return, if applicable, and agree that all decisions by the Advisory Firm with respect thereto shall, absent fraud or manifest error, be final and conclusive and binding on the Parties. The Advisory Firm shall resolve all disputes in a manner consistent with this Agreement and, to the extent not inconsistent with this Agreement, in a manner consistent with the past practices of Exelon and its Affiliates, except as otherwise required by applicable Law. The Parties shall require the Advisory Firm to render all determinations in writing to each of the Parties and to set forth, in reasonable detail, the basis for such determination. The fees and expenses of the Advisory Firm shall be paid by the non-prevailing Party. In any action to enforce the final determination of the Advisory Firm, each of the Parties irrevocably and unconditionally (i) consents and submits to the jurisdiction and venue of the courts of the State of Delaware and the federal courts of the United States of America located within the State of Delaware (the “**Delaware Courts**”); (ii) waives, to the fullest extent it may effectively do so, any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens or any right of objection to jurisdiction on account of its place of incorporation or domicile, which it may now or hereafter have to the bringing of any such action or proceeding in any Delaware Court; (iii) consents to service of process in the manner provided by Section 8.05 (other than delivery by e-mail) or in any other manner permitted by law; and (iv) WAIVES ANY RIGHT TO TRIAL BY JURY.

**7.03 Arbitration.** In order to facilitate the comprehensive resolution of related disputes, all claims between any of the parties to a Dispute that arises under or in connection with both this Agreement, on the one hand, and the Separation Agreement and/or the other Ancillary Agreements, on the other hand, may be brought in a single arbitration in accordance with this Section 7.03. Upon the written request of any party to an arbitration proceeding constituted under both this Agreement, on the one hand, and the Separation Agreement and/or the other Ancillary Agreements, on the other hand, the arbitral tribunal shall consolidate such arbitration proceeding with any other arbitration proceeding relating to this Agreement, on the one hand and the Separation Agreement and/or the other Ancillary Agreements, on the other hand, if the arbitral tribunal determines that (i) there are issues of fact or Law common to the proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no party to the Dispute would be unduly prejudiced as a result of such consolidation through undue delay or otherwise. In the event of different rulings on this question by the arbitral tribunal constituted hereunder and another arbitral tribunal constituted under this Agreement, on the one hand, and the Separation Agreement and/or the other Ancillary Agreements, on the other hand, the ruling of the arbitral tribunal constituted first in time shall control, and such arbitral tribunal shall serve as the tribunal for any consolidated arbitration.

**7.04 Dispute.** In the event of a Dispute, each party to the Dispute shall continue to perform its obligations under the Separation Agreement, this Agreement, and the other Ancillary Agreements in good faith during the resolution of such Dispute as if such Dispute had not arisen, unless and until the Separation Agreement, this Agreement, or the other Ancillary Agreements, as applicable, are terminated in accordance with their respective provisions.

## **ARTICLE VIII MISCELLANEOUS**

**8.01 Incorporation by Reference.** The following sections of the Separation Agreement are hereby incorporated in this Agreement by reference to the extent not inconsistent with any of the provisions set forth in this Agreement: Section 8.7 (Confidentiality); Section 8.8 (Privileged Matters); Section 12.3 (Amendments and Waivers); Section 12.4 (Entire Agreement); Section 12.5 (Survival of Agreements); Section 12.9 (Counterparts; Electronic Delivery); Section 12.10 (Severability); Section 12.11 (Assignability; Binding Effect); Section 12.12 (Governing Law); Section 12.13 (Construction); Section 12.14 (Performance); Section 12.15 (Title and Headings); and Section 12.16 (Schedules and Exhibits).

**8.02 Third Party Beneficiaries.** This Agreement shall be binding upon and inure solely to the benefit of Exelon, Constellation, and their respective Affiliates, and nothing herein, express or implied, is intended to or shall confer upon any third parties any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**8.03 Effectiveness.** This Agreement shall become effective on the Distribution Date.

**8.04 Changes in Law.** Any reference to a provision of the Code, Treasury Regulations, or a Law of another jurisdiction shall include a reference to any applicable successor provision or Law. If, due to any change in applicable Law or regulations or their interpretation by any court of Law or other governing body having jurisdiction subsequent to the date specified in the preamble to this Agreement, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, the Parties shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

**8.05 Notices.** All notices, requests, permissions, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) five (5) Business Days following sending by registered or certified mail, postage prepaid, (b) when sent, if sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, (c) when delivered, if delivered personally to the intended recipient, and (d) one (1) Business Day following sending by overnight delivery via a national courier service and, in each case, addressed to a Party at the following address for such Party (as updated from time to time by notice in writing to the other Party):

(a) If to Exelon, at:

Exelon Corporation  
10 S. Dearborn St.  
Chicago, IL 60603  
Attention: General Counsel  
Email: [gayle.littleton@exeloncorp.com](mailto:gayle.littleton@exeloncorp.com)

(b) If to Constellation, at:

Constellation Energy Corporation  
1310 Point Street  
Baltimore, MD 21231  
Attention: General Counsel  
Email: [david.dardis@constellation.com](mailto:david.dardis@constellation.com)

**8.06 Joint and Several Liability.** Constellation and each Affiliate of Constellation shall have joint and several liability for any obligation of Constellation or an Affiliate of Constellation arising pursuant to this Agreement. Exelon and each Affiliate of Exelon (other than any such Affiliate that is a utility or direct or indirect subsidiary thereof) shall have joint and several liability for any obligation of Exelon or an Affiliate of Exelon arising pursuant to this Agreement.

**8.07 Tax Sharing Agreements.** All Tax sharing, indemnification and similar agreements, written or unwritten, as between any member of the Constellation Group, on the one hand, and any member of the Exelon Group, on the other hand (other than the Separation Agreement, this Agreement, or any other Ancillary Agreement), shall be or shall have been terminated as of the Effective Time and, after the Effective Time, none of such Parties (or their respective Subsidiaries) to any such Tax sharing, indemnification or similar agreement shall have any further rights or obligations under any such agreement.

**8.08 Expenses.** Unless otherwise expressly provided in this Agreement, each Party shall bear any and all expenses that arise from their respective obligations under this Agreement.

**8.09 Limitation on Damages.** Each Party irrevocably waives, and no Party shall be entitled to seek or receive, consequential, special, indirect or incidental damages (including without limitation damages for loss of profits) or punitive damages, regardless of how such damages were caused and regardless of the theory of liability; provided that the foregoing shall not limit each Party's indemnification obligations set forth in the Separation Agreement, this Agreement and the Ancillary Agreements.

**8.10 Consent by Affiliates.** Constellation shall cause each of its respective Affiliates (including any entity that becomes an Affiliate after the date hereof) to consent to, and be bound by, the terms, conditions, covenants, and provisions of this Agreement.

**8.11 Coordination with Other Agreements.** The Parties agree that this Agreement shall take precedence over any and all agreements among the Parties with respect to Tax matters that are in effect as of the date hereof, including indemnification in respect of Tax matters; provided, however, this Agreement shall not take precedence over any Tax matter relating to the payment or reimbursement of Taxes that exists now or in the future under any lease of property or power purchase agreement between Exelon and Constellation, or any of their respective Affiliates, as the case may be, and any such Taxes shall be governed exclusively by such leases or power purchase agreements without regard to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date first written

EXELON CORPORATION

By: /s/ Christopher Crane

Name: Christopher Crane

Title: President and Chief Executive Officer

Constellation Energy Corporation

By: /s/ Joseph Dominguez

Name: Joseph Dominguez

Title: President and Chief Executive Officer

[Tax Matters Agreement]

---

## Schedules to Tax Matters Agreement

### Schedule A: Tax Sharing Agreement of Tax Credit Carryforwards

---

## EMPLOYEE MATTERS AGREEMENT

THIS EMPLOYEE MATTERS AGREEMENT (this “**Agreement**”) is dated January 31, 2022, by and between EXELON CORPORATION, a Pennsylvania corporation (“**Exelon**”), and Constellation Energy Corporation, a Pennsylvania corporation and a direct, wholly-owned subsidiary of Exelon (“**Constellation**”). Exelon and Constellation are sometimes referred to herein individually as a “**Party**,” and collectively as the “**Parties**.” Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in Section 1.1.

## RECITALS

WHEREAS, Exelon and Constellation have entered into a Separation Agreement, dated as of the date hereof (the “**Separation Agreement**”), pursuant to which Exelon will distribute on a *pro rata* basis to the holders of shares of Exelon common stock, without par value (“**Exelon Shares**”), without any consideration being paid by the holders of such Exelon Shares, all of the outstanding shares of Constellation common stock, without par value (“**Constellation Shares**”), owned by Exelon as of the Distribution Date (as defined in the Separation Agreement); and

WHEREAS, in connection with the Distribution (as defined in the Separation Agreement), Exelon and Constellation desire to enter into this Employee Matters Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

## ARTICLE I

## DEFINITIONS

**1.1 Definitions.** Unless otherwise defined herein, each capitalized term shall have the meaning specified for such term in the Separation Agreement. As used in this Agreement:

“**Adjusted Exelon Stock Award**” has the meaning set forth in Section 6.2(b).

“**Adjusted Exelon Stock Option Award**” has the meaning set forth in Section 6.4(b).

“**Agreement**” means this Employee Matters Agreement together with those parts of the Separation Agreement referenced herein and all schedules hereto and all amendments, modifications and changes hereto and thereto.

“**BSC**” means Exelon Business Services Company, LLC.

“**Code**” means the Internal Revenue Code of 1986.

“**ComEd**” means Commonwealth Edison Company.

---

**“ComEd/BSC-Local 15 Agreement”** means the Agreement (including the collective bargaining agreements referenced therein) entered into prior to the Distribution Date among ComEd and BSC, including any transferees from and/or successors to ComEd and/or BSC and Local 15 of the International Brotherhood of Electrical Workers (**“Local 15”**) on behalf of its members that addresses the impact of the Distribution on the collective bargaining agreement among ComEd/BSC and Local 15 and on the Exelon Employees represented by Local 15.

**“Constellation”** has the meaning set forth in the first paragraph of this Agreement.

**“Constellation Board”** means the Board of Directors of Constellation (or, as the context requires, the Compensation Committee or Corporate Governance Committee thereof).

**“Constellation Business”** means a business involving the competitive power generation and marketing and trading of electricity and gas, principally through Exelon Generation Company, LLC and its Subsidiaries. For the sake of clarity, Constellation Business also includes any other business conducted by any member of the Constellation Group as of or prior to the date of this Agreement.

**“Constellation Conversion Ratio”** has the meaning set forth in Section 6.2(a).

**“Constellation Director”** means a person who serves as a nonemployee director of Constellation immediately after the Distribution Date.

**“Constellation Director Deferred Compensation Plans”** has the meaning set forth in Section 3.3(c).

**“Constellation Executive Deferred Compensation Plans”** has the meaning set forth in Section 3.3(a).

**“Constellation Employee”** means (i) each person who immediately prior to the Distribution Date is employed by a member of the Constellation Group, (ii) each former employee of Exelon or any of its Affiliates whose last employment prior to termination was with a member of the Constellation Group and (iii) each former employee of Exelon or any of its Affiliates whose last employment prior to termination was with a member of the Exelon Group but (A) whose job duties immediately prior to termination related primarily to the Constellation Business, (B) who immediately prior to termination was employed at a location that primarily served the Constellation Business or (C) who was a Shared Services Employee whose employment terminated on or after January 1, 2001 and who immediately prior to termination was not employed at a location that primarily served either the Exelon Business or the Constellation Business; provided that no person who is listed as an Exelon Employee in Schedule A hereto shall be considered a Constellation Employee. Prior to the Distribution Date, Exelon shall determine, in its sole discretion, which current and former employees are Constellation Employees, based on their title and location of employment and such other criteria that Exelon determines are controlling.

**“Constellation ESP”** has the meaning set forth in Section 3.1(a).

**“Constellation ESP Trust”** means the trust maintained under the Constellation ESP.

“**Constellation ESPP**” has the meaning set forth in Section 6.6(a).

“**Constellation Fringe Benefit Plans**” has the meaning set forth in Section 5.5.

“**Constellation FSA**” has the meaning set forth in Section 4.5.

“**Constellation Group**” means (a) Constellation, (b) the Constellation Entities and (c) each Person that becomes a subsidiary of Constellation after the Distribution, including in each case any Person that is merged or consolidated with or into, or the result of a statutory division of, Constellation or any Subsidiary of Constellation.

“**Constellation Pension Plans**” has the meaning set forth in Section 3.2(a).

“**Constellation Pension Trust**” has the meaning set forth in Section 3.2(c).

“**Constellation Post-Distribution Stock Price**” means the per share price of Constellation Shares, determined on a post-Distribution basis, which shall be equal to the average of the volume weighted average price of Constellation Shares for each of the five consecutive trading days beginning with the day immediately following the Distribution Date.

“**Constellation Rabbi Trusts**” has the meaning set forth in Section 3.3(a).

“**Constellation Retiree Welfare Plans**” has the meaning set forth in Section 4.6(a).

“**Constellation Shares**” has the meaning set forth in the recitals of this Agreement.

“**Constellation Stock Plans**” has the meaning set forth in Section 6.1.

“**Constellation Welfare Plan**” has the meaning set forth in Section 4.1.

“**Compensation Committee**” means the Compensation and Leadership Development Committee of the Exelon Board or the Compensation and Leadership Development Committee of the Constellation Board, as the case may be (or any successor committee thereto).

“**Corporate Governance Committee**” means the Corporate Governance Committee of the Exelon Board or the Corporate Governance Committee of the Constellation Board, as the case may be (or any successor committee thereto).

“**Deceased Constellation Employee**” means a Constellation Employee who died prior to the Distribution Date.

“**Deceased Exelon Employee**” means an Exelon Employee who died prior to the Distribution Date.

**“Designated Pension Plans”** means (i) the Exelon Employee Pension Plan for Clinton, TMI and Oyster Creek (consisting of Exelon Pension Plan for Represented Employees at TMI and OYC, Exelon Pension Plan for Non-Represented Employees at TMI and OYC, Exelon Pension Plan for Represented Employees at Clinton, Exelon Pension Plan for Non-Represented Employees at Clinton, Exelon Cash Balance Pension Plan for Employees at TMI, OYC and Clinton, Exelon Corporation Cash Balance Plan for Non-Bargaining Employees at J.A.F., Exelon Corporation Retirement Plan II for Non-Bargaining Employees at J.A.F., Exelon Corporation Retirement Plan II for Bargaining Employees at J.A.F., and Exelon Corporation Retirement Plan III for Employees at J.A.F.), (ii) the Exelon New England Union Employees Pension Plan, (iii) the Pension Plan of Constellation Energy Nuclear Group, LLC, (iv) the Nine Mile Point Pension Plan, and (v) the Constellation Mystic Power, LLC Union Employees Pension Plan including Plan A and Plan B.

**“Designated 401(k) Plans”** means (i) the Exelon Employee Savings Plan for Represented Employees at TMI and Oyster Creek and (ii) the Exelon Employee Savings Plan for Represented Employees at Clinton.

**“ERISA”** means the Employee Retirement Income Security Act of 1974.

**“Exelon”** has the meaning set forth in the first paragraph of this Agreement.

**“Exelon Business”** means a business involving the regulated transmission and distribution of electricity and natural gas, principally through Exelon Energy Delivery Company, LLC and its Subsidiaries. For the sake of clarity, the Exelon Business does not include the Constellation Business.

**“Exelon Conversion Ratio”** has the meaning set forth in Section 6.2(b).

**“Exelon DB Master Trust”** has the meaning set forth in Section 3.2(c).

**“Exelon Director Deferred Compensation Plans”** means (i) the Exelon Corporation Non-Employee Directors’ Deferred Stock Unit Plan, (ii) the Exelon Corporation Unfunded Deferred Compensation Plan for Directors, (iii) the Constellation Energy Group Deferred Compensation Plan for Non-Employee Directors, (iv) the Atlantic City Electric Director Retirement Plan, and any other nonqualified deferred compensation plan maintained by a member of the Exelon Group or the Constellation Group for the benefit of nonemployee directors.

**“Exelon Executive Deferred Compensation Plans”** means (i) the Exelon Corporation Deferred Compensation Plan, (ii) the Exelon Corporation Supplemental Management Retirement Plan, (iii) the Exelon Corporation Stock Deferral Plan, (iv) the Exelon Corporation Supplemental Pension Benefit Plan, (v) the PECO Energy Company Supplemental Pension Benefit Plan, (vi) the Unicom Corporation Deferred Compensation Unit Plan, (vii) the Constellation Energy Group Nonqualified Deferred Compensation Plan, (viii) the Constellation Energy Group Benefits Restoration Plan, (ix) the Constellation Energy Group Supplemental Pension Plan, (x) the Constellation Energy Nuclear Plan, LLC Executive Retirement Plan, (xi) the Constellation Energy Nuclear Plan, LLC Benefits Restoration Plan, (xii) the Pepco Holdings LLC 2011 Supplemental Executive Retirement Plan, (xiii) the Conectiv Supplemental Executive Retirement Plan, (xiv) the Pepco Holdings LLC Combined Executive Retirement Plan, (xv) the PEPCO Deferred Compensation Plan, (xvi) the Commonwealth Edison Company Deferred Compensation Plan and any other nonqualified deferred compensation plan maintained by a member of the Exelon Group or the Constellation Group for current or former employees.

**“Exelon DSU Award”** means a deferred stock unit award granted under any of the Exelon Stock Plans that is outstanding as of the Distribution Date.

**“Exelon Employee”** means (i) each person who immediately prior to the Distribution Date is employed by a member of the Exelon Group, (ii) each former employee of Exelon or any of its Affiliates (A) whose job duties immediately prior to termination related primarily to the Exelon Business, (B) who immediately prior to termination was employed at a location that primarily served the Exelon Business or (C) who was a Shared Services Employee whose employment terminated prior to January 1, 2001 and who immediately prior to termination was not employed at a location that primarily served either the Exelon Business or the Constellation Business and (iii) such other former employees of Exelon or any of its Affiliates who are listed in Schedule A hereto. Prior to the Distribution Date, Exelon shall determine, in its sole discretion, which current and former employees are Exelon Employees, based on their title and location of employment and such other criteria that Exelon determines are controlling.

**“Exelon ESP”** means the Exelon Corporation Employee Savings Plan.

**“Exelon ESP Trust”** means the trust maintained under the Exelon ESP.

**“Exelon ESPP”** has the meaning set forth in Section 6.6(a).

**“Exelon Fringe Benefit Plans”** has the meaning set forth in Section 5.5.

**“Exelon FSA”** has the meaning set forth in Section 4.5.

**“Exelon Group”** means, collectively, Exelon and the Subsidiaries and entities held by Exelon other than Constellation and the Constellation Entities.

**“Exelon Non-ERISA Benefit Arrangement”** means any Non-ERISA Benefit Arrangement sponsored or maintained by Exelon or any of its Subsidiaries.

**“Exelon Pension Plans”** means (i) the Exelon Corporation Retirement Program (consisting of the Commonwealth Edison Company Service Annuity System, Service Annuity Plan of PECO Energy Company and Exelon Corporation Cash Balance Pension Plan), (ii) the Exelon Corporation Pension Plan for Bargaining Unit Employees, (iii) the Pension Plan of Constellation Energy Group, Inc., and (iv) the Pepco Holdings LLC Retirement Plan (consisting of GRP Sub-Plan, ACE Sub-Plan, PHI Sub-Plan, Delmarva Sub-Plan and Conectiv Cash Balance Sub-Plan).

**“Exelon Performance Share Award”** means a performance share award granted under any of the Exelon Stock Plans that is outstanding as of the Distribution Date.

**“Exelon Plan”** means any Pension Plan or Welfare Plan sponsored or maintained by a member of the Exelon Group.

**“Exelon Post-Distribution Stock Price”** means the per share price of Exelon Shares, determined on a post-Distribution basis, which shall be equal to the average of the volume weighted average price of Exelon Shares for each of the five consecutive trading days beginning with the day immediately following the Distribution Date.

**“Exelon Pre-Distribution Stock Price”** means the per share price of Exelon Shares, determined on a pre-Distribution basis, which shall be equal to the average of the volume weighted average price of Exelon Shares, traded regular way, for each of the five consecutive trading days immediately preceding and including the Distribution Date.

**“Exelon Rabbi Trusts”** has the meaning set forth in Section 3.3(a).

**“Exelon Retiree Welfare Plans”** means Exelon Welfare Plans that cover retired employees.

**“Exelon RSU Award”** means a restricted stock unit award granted under any of the Exelon Stock Plans that is outstanding as of the Distribution Date.

**“Exelon Shares”** has the meaning set forth in the recitals of this Agreement.

**“Exelon Stock Award”** has the meaning set forth in Section 6.2(a).

**“Exelon Stock Option Award”** means a stock option award granted under any of the Exelon Stock Plans that is outstanding as of the Distribution Date.

**“Exelon Stock Plans”** mean the Exelon Corporation 2006 Long-Term Incentive Plan, the Exelon Corporation 2011 Long-Term Incentive Plan, the Exelon Corporation 2020 Long-Term Incentive Plan, the Constellation Energy Group, Inc. Amended and Restated 2007 Long-Term Incentive Plan and any other equity or equity-based incentive plan under which awards have been granted to current or former employees or nonemployee directors of the Exelon Group or the Constellation Group.

**“Exelon Welfare Plan”** means a Welfare Plan sponsored or maintained by any member of the Exelon Group.

**“ExGen”** means Exelon Generation Company, LLC.

**“ExGen-Local 15 Agreement”** means the Agreement (including the collective bargaining agreements referenced therein) entered into prior to the Distribution Date between ExGen, including any transferees from and/or successors to ExGen, and Local 15, that addresses the impact of the Distribution on the collective bargaining agreement between ExGen and Local 15 and on the Constellation Employees represented by Local 15.

**“Final Transfer Amount”** has the meaning set forth in Section 3.2(c).

**“Final Transfer Date”** has the meaning set forth in Section 3.2(c).

**“Former Shared Services Employee”** means a Shared Services Employee whose employment with the Exelon Group or the Constellation Group terminated prior to the Distribution Date.

**“Initial Transfer Amount”** has the meaning set forth in Section 3.2(c).

**“IRS”** means the Internal Revenue Service.

**“Non-ERISA Benefit Arrangement”** means any contract, agreement, policy, practice, program, plan, trust or arrangement, other than a Pension Plan or Welfare Plan, providing for benefits, perquisites or compensation of any nature, including but not limited to transportation, tuition reimbursement, adoption assistance, vacation, holidays, sick, personal or bereavement days, relocation benefits, supplemental unemployment, bonus or other forms of incentive compensation.

**“Pension Plan”** means any pension plan as defined in Section 3(2) of ERISA, without regard to Section 4(b)(4) or 4(b)(5) of ERISA.

**“Separation Agreement”** has the meaning set forth in the recitals of this Agreement.

**“Shared Services Employee”** means a current or former employee of the Exelon Group or Constellation Group whose job duties are not or were not, immediately prior to termination of employment, related primarily to either the Exelon Business or the Constellation Business.

**“Substitute Constellation Stock Option Award”** has the meaning set forth in Section 6.4(a)

**“Substitute Constellation RSU Award”** has the meaning set forth in Section 6.2(a).

**“Surviving Dependent”** means each individual who immediately prior to the Distribution Date was enrolled in the Exelon Corporation Health Care Program as a surviving dependent of a Deceased Constellation Employee.

**“Transactions”** means, collectively, the transactions and other actions contemplated by this Agreement.

**“VEBA”** means a tax-exempt entity established pursuant to Section 501(c)(9) of the Code.

**“Welfare Plan”** means any employee welfare plan as defined in Section 3(1) of ERISA, without regard to Section 4(b)(4) or 4(b) (5) of ERISA.

**1.2 Interpretation.** In this Agreement, unless the context clearly indicates otherwise:

- (a) words used in the singular include the plural and words used in the plural include the singular;
- (b) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;
- (c) the word “or” shall have the inclusive meaning represented by the phrase “and/or”;

- (d) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;
- (e) accounting terms used herein shall have the meanings historically ascribed to them by Exelon and its Subsidiaries in their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;
- (f) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (g) reference to any Law means such Law (including any and all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (h) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; a reference to such Person’s “Affiliates” shall be deemed to mean such Person’s Affiliates following the Distribution and any reference to a third party shall be deemed to mean a Person who is not a Party or an Affiliate of a Party;
- (i) if there is any conflict between the provisions of the main body of this Agreement and any exhibits or schedules hereto, the provisions of the main body of this Agreement shall control unless explicitly stated otherwise in such exhibit or schedule; and
- (j) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be.

## **ARTICLE II**

### **ASSIGNMENT OF EMPLOYEES**

As of the date immediately prior to the Distribution Date, (i) the employment of each current employee of the Exelon Group who is intended to be a Constellation Employee shall have been assigned and transferred to the Constellation Group and (ii) the employment of each current employee of the Constellation Group who is intended to be an Exelon Employee shall have been assigned and transferred to the Exelon Group. If it is determined after the Distribution Date that any employees were not properly assigned and transferred to the appropriate employer prior to the Distribution Date or that it is necessary or appropriate to assign and transfer an employee performing services pursuant to the Transition Services Agreement to the other group, the Parties shall cooperate in good faith to effect such assignment and transfer after the Distribution Date. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall create any obligation on the part of the Exelon Group or the Constellation Group to continue the employment of any employee for any definite period following the Distribution Date or to change the employment status of any employee from “at will.”

## ARTICLE III

### PENSION, RETIREMENT AND DEFERRED COMPENSATION PLANS

#### 3.1 Defined Contribution Plans.

(a) **Establishment of the Constellation Employee Savings Plan.** Effective on or before the Distribution Date, Constellation shall adopt, establish and maintain a 401(k) profit sharing plan and trust for the benefit of employees of the Constellation Group that has substantially the same terms and conditions as the Exelon ESP and is intended to be qualified under Section 401(a) of the Code and exempt from federal income tax under Section 501(a) of the Code (the “**Constellation ESP**”). As soon as practicable after the adoption of the Constellation ESP, Constellation shall submit an application to the IRS for a determination that the Constellation ESP is qualified under Section 401(a) of the Code and that the related Constellation ESP Trust is exempt from federal income tax under Section 501(a) of the Code, and shall take any actions not inconsistent with Constellation’s other general commitments contained in this Agreement and make any amendments necessary to receive such determination.

(b) **Transfer of Assets from Exelon Corporation Employee Savings Plan.** On or as soon as administratively practicable after the Distribution Date, Exelon and Constellation shall cause the Exelon ESP Trust to transfer to the Constellation ESP Trust assets having a value as of the applicable valuation date that is equal to the value of the account balances of, and accrued liabilities (including any outstanding loan balances) with respect to, all Constellation Employees and all survivors and beneficiaries of all Deceased Constellation Employees with an account balance under the Exelon ESP as of such valuation date. “Accrued liabilities” for these purposes shall include employer matching contributions (including fixed matching contributions and nondiscretionary employer profit sharing contributions) and nondiscretionary fixed employer contributions deposited to the Exelon ESP Trust on a per payroll or annual basis, as applicable, for any Constellation Employee that was accrued prior to the transfer of assets from the Exelon ESP Trust to the Constellation ESP Trust. In addition, on or as soon as administratively practicable after the Distribution Date, a pro rata share of all unallocated amounts (including but not limited to any forfeiture accounts, revenue sharing credit accounts, as applicable, or other unallocated accounts held under the Exelon ESP immediately prior to the Distribution Date) shall be transferred from the Exelon ESP Trust to the Constellation ESP Trust, determined based upon the ratio of the number of all Constellation Employees actively participating in the Exelon ESP immediately prior to the Distribution Date to the number of all employees actively participating in the Exelon ESP immediately prior to the Distribution Date. Assets transferred pursuant to this paragraph shall be in cash or in kind, including shares of securities, promissory notes evidencing outstanding plan loans, Exelon Shares or Constellation Shares, and such transfer shall be made in accordance with Section 414(l) of the Code. Liabilities under any qualified domestic relations orders (as defined in Section 414(p) of the Code) received with respect to any accounts transferred to the Constellation ESP shall be transferred to and assumed by the Constellation ESP at the time such assets attributable to such accounts are transferred. Constellation shall continue to process any plan loans transferred from the Exelon ESP to the Constellation ESP. All beneficiary designations made by Constellation Employees and by survivors and beneficiaries of Deceased Constellation Employees under the Exelon ESP shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation ESP until such beneficiary designations are subsequently replaced or revoked by the Constellation Employee (or the survivor or beneficiary of the Deceased Constellation Employee) who made the beneficiary designation (or his or her legally recognized agent). On and after the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume and thereafter be solely responsible for all then existing and future employer liabilities related to such Constellation Employees and survivors and beneficiaries of Deceased Constellation Employees under the Constellation ESP and the administration thereof and the Exelon Group shall have no liability whatsoever therefor.

(c) **Transfer of Designated 401(k) Plans.** Exelon shall take all actions as may be necessary or appropriate to transfer the Designated 401(k) Plans in whole to Constellation as of the Distribution Date, including any related trusts and all assets and liabilities relating thereto, and Constellation shall accept such transfer. Any Constellation Employees and any survivors or beneficiaries of any Deceased Constellation Employees who were participating in the Designated 401(k) Plans as of immediately prior to the Distribution Date shall continue to participate in the Designated 401(k) Plans following the Distribution Date, in accordance with the applicable plan terms. On and after the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume and thereafter be solely responsible for all then existing and future employer liabilities related to such Constellation Employees and survivors and beneficiaries of Deceased Constellation Employees under the Designated 401(k) Plans and the administration thereof, and the Exelon Group shall have no liability whatsoever therefor.

(d) **Liquidation of Non-Employer Stock Held in Exelon ESP and Constellation ESP.** Subject to the exercise of its fiduciary duties or other requirements of ERISA and any other applicable Laws, as soon as administratively practicable after the Distribution Date, Exelon shall cause the Exelon ESP to liquidate any Constellation Shares held in the Exelon ESP. Subject to the exercise of its fiduciary duties or other requirements of ERISA and any other applicable Laws, as soon as administratively practicable after the Distribution Date, Constellation shall cause the Constellation ESP to liquidate any Exelon Shares held in the Constellation ESP.

### 3.2 Defined Benefit Pension Plans.

(a) **Establishment of Constellation Pension Plans.** Effective on or before the Distribution Date, Constellation shall adopt, establish and maintain one or more Pension Plans and a trust for the benefit of Constellation Employees (the “*Constellation Pension Plans*”). Whether in a unified plan document or multiple plan documents that make up a single Pension Plan, or separate plan documents for separate Pension Plans, the Constellation Pension Plans will have substantially the same terms and conditions as each applicable Exelon Pension Plan in which Constellation Employees participate prior to the Distribution Date. The Constellation Pension Plans are intended to be qualified under Section 401(a) of the Code and exempt from federal income tax under Section 501(a) of the Code. As soon as practicable after the adoption of the Constellation Pension Plans and trust, Constellation shall submit an application to the IRS for a determination that the Constellation Pension Plans are qualified under Section 401(a) of the Code and that the related trust is exempt from federal income tax under Section 501(a) of the Code, and shall take any actions not inconsistent with Constellation’s other general commitments contained in this Agreement and make any amendments necessary to receive such determination. As of the Distribution Date, the Constellation Pension Plans shall assume all liabilities with respect to all Constellation Employees under the applicable Exelon Pension Plans (and any survivor or beneficiary of a Deceased Constellation Employee who is entitled to a benefit under the applicable Exelon Pension Plans immediately prior to the Distribution Date) and neither Exelon nor any of its Affiliates shall assume or retain any such liabilities. All beneficiary designations made by Constellation Employees and by survivors and beneficiaries of Deceased Constellation Employees under the Exelon Pension Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Pension Plans until such beneficiary designations are replaced or revoked by the Constellation Employee (or the survivor or beneficiary of the Deceased Constellation Employee) who made the beneficiary designation (or his legally recognized agent). Further, liabilities under any qualified domestic relations orders (as defined in Section 414(p) of the Code) received with regard to any benefits for such Constellation Employees shall be transferred to and assumed by the Constellation Pension Plans as of the Distribution Date.

(b) **Transfer of Designated Pension Plans.** Exelon shall take all actions as may be necessary or appropriate to transfer the Designated Pension Plans in whole to Constellation as of the Distribution Date. Any Constellation Employees and any survivors or beneficiaries of any Deceased Constellation Employees who were participating in the Designated Pension Plans as of immediately prior to the Distribution Date shall continue to participate in the Designated Pension Plans following the Distribution Date, in accordance with the applicable plan terms. On and after the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume and thereafter be solely responsible for all then existing and future employer liabilities related to such Constellation Employees and survivors and beneficiaries of Deceased Constellation Employees under the Designated Pension Plans and the administration thereof, and the Exelon Group shall have no liability whatsoever therefor. As of the Distribution Date, one or more of the Exelon Pension Plans shall assume all liabilities with respect to all Exelon Employees who have accrued a benefit under the Designated Pension Plans (and any survivor or beneficiary of a Deceased Exelon Employee who is entitled to a benefit under the Designated Pension Plans immediately prior to the Distribution Date) and neither Constellation nor any of its Affiliates shall assume or retain any such liabilities. All beneficiary designations made by Exelon Employees and by survivors and beneficiaries of Deceased Exelon Employees under the Designated Pension Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the applicable Exelon Pension Plan until such beneficiary designations are replaced or revoked by the Exelon Employee (or the survivor or beneficiary of the Deceased Exelon Employee) who made the beneficiary designation (or his legally recognized agent). Further, liabilities under any qualified domestic relations orders (as defined in Section 414(p) of the Code) received with regard to any benefits for such Exelon Employees shall be transferred to and assumed by the applicable Exelon Pension Plan as of the Distribution Date.

(c) **Transfer of Assets.** Within 30 days after the Distribution Date, Exelon shall cause to be transferred from the Exelon Corporation Pension Master Retirement Trust (the “**Exelon DB Master Trust**”) to the trust established for the Constellation Pension Plans and the Designated Pension Plans (the “**Constellation Pension Trust**”) an initial amount of assets (the “**Initial Transfer Amount**”) in cash and cash equivalents held in the Exelon DB Master Trust, which amount shall be equal to a portion of the amount the actuary engaged by the Exelon Pension Plans and Designated Pension Plans determines in good faith to be a reasonable estimate of the aggregate amount of assets to be transferred as of the Distribution Date for all Constellation Employees (and all survivors and beneficiaries of Deceased Constellation Employees) with accrued benefits under the applicable Exelon Pension Plans or Designated Pension Plans in accordance with Section 414(l) of the Code and Section 4044 of ERISA. As soon as administratively practicable after the Distribution Date, the actuary engaged by the applicable Exelon Pension Plans and Designated Pension Plans shall determine the final amount of assets to be transferred as of the Distribution Date for all Constellation Employees (and all survivors and beneficiaries of Deceased Constellation Employees) with accrued benefits under the Exelon Pension Plans and Designated Pension Plans in accordance with Section 414(l) of the Code and Section 4044 of ERISA (the “**Final Transfer Amount**”). Over the time period determined by the Exelon Group, in consultation with the Constellation Group, after the date the Final Transfer Amount is determined, and in accordance with the procedures agreed upon by the Exelon Group and the Constellation Group, the Exelon Group shall direct the trustee of the Exelon DB Master Trust to transfer to the trustee of the Constellation Pension Trust assets in an amount equal to the Final Transfer Amount, reduced (i) by the Initial Transfer Amount, (ii) as necessary to reflect benefit payments made from the Exelon DB Master Trust on behalf of any Constellation Employees (or any survivors or beneficiaries of Deceased Constellation Employees) under the applicable Exelon Pension Plans and Designated Pension Plans, which payments are effective as of the Distribution Date or any other date between the Distribution Date and the Final Transfer Date, (iii) by any administrative expenses paid from the Exelon DB Master Trust prior to the Final Transfer Date in preparation for the administration of the Constellation Pension Plans and Designated Pension Plans and the transfer of the Final Transfer Amount to the Constellation Pension Trusts, (iv) the amount of assets to be retained by the Exelon DB Master Trust as of the Distribution Date for all Exelon Employees (and all survivors and beneficiaries of Deceased Exelon Employees) with accrued benefits under the Designated Pension Plan in accordance with Section 414(l) of the Code and Section 4044 of ERISA, as determined by the actuary engaged by the Designated Pension Plans and (v) by the pro-rata portion of monthly investment expenses incurred by the Exelon Pension Plans and Designated Pension Plans attributable to the Final Transfer Amount for the period beginning on the Distribution Date and ending on the Final Transfer Date. From the actual date of delivery of the Initial Transfer Amount on the Distribution Date until the actual date of delivery of the Final Transfer Amount (the “**Final Transfer Date**”), the trustee of the Exelon DB Master Trust shall hold the Final Transfer Amount under the Exelon Pension Plans and Designated Pension Plans and the Final Transfer Amount shall be credited with earnings, from the Distribution Date to the Final Transfer Date, at a rate of return appropriate for the Constellation Pension Plans’ investments in the Exelon DB Master Trust for the period beginning on the Distribution Date and ending on the Final Transfer Date, as determined by agreement between (i) the Exelon Group through its authorized representative acting as, or on behalf of, the named fiduciary of the Exelon Pension Plans (the “**Exelon Named Fiduciary**”) and (ii) the Constellation Group through its authorized representative acting as, or on behalf of, the named fiduciary of the Constellation Pension Plans and Designated Pension Plans (the “**Constellation Named Fiduciary**”). In addition, the Constellation Named Fiduciary shall direct the Exelon Group with respect to investments and liquidations of assets held by the Exelon DB Master Trust that are allocated in the Exelon DB Master Trust’s records for the benefit of the Constellation Pension Trust during the period beginning on the Distribution Date and ending on the Final Transfer Date, and the Exelon Group and the Exelon Named Fiduciary shall have no such responsibility. To the extent the parties discover, within eighteen months after the date on which the final transfer of assets is made from the Exelon DB Master Trust to the Constellation Pension Trust, that an incorrect amount (either too much or too little) of assets has been transferred from the Exelon DB Master Trust to the Constellation Pension Trust, the parties shall take all corrective action necessary to ensure that such assets have been properly transferred between the DB Master Trust and the Constellation Pension Trust in accordance with ERISA, the Code and the procedures agreed upon by the Exelon Group and the Constellation Group. The Exelon Group and the Constellation Group, through their respective authorized representatives acting as the named fiduciary of the Exelon Pension Plans, the Constellation Pension Plans and the Designated Pension Plans, respectively, shall cooperate in good faith in determining the assets that are transferred in kind as part of the Initial Transfer Amount and the Final Transfer Amount and as to the timing of, and procedures for, the transfers.

(d) **Indemnification.** The Constellation Group shall indemnify, defend and hold harmless each of the Exelon Indemnitees from and against any and all Losses incurred or suffered by one or more of the Exelon Indemnitees in connection with, relating to, arising out of or due to, directly or indirectly, the actions or omissions of the named fiduciary of the Constellation Pension Plans and the Designated Pension Plans relating to the assets held by the Exelon DB Master Trust allocated for the benefit of the Constellation Pension Trust.

### 3.3 Nonqualified Deferred Compensation Plans.

(a) **Executive Plans.** Except as provided under Section 3.3(b), effective on or before the Distribution Date, Constellation shall adopt, establish and maintain nonqualified deferred compensation plans for the benefit of employees of the Constellation Group (the “**Constellation Executive Deferred Compensation Plans**”) that in each case shall have substantially the same terms and conditions as the Exelon Executive Deferred Compensation Plans in which Constellation Employees participate immediately prior to the Distribution Date. Except as provided under Section 3.3(b) or in Schedule B, as of the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume and thereafter be solely responsible for all existing and future liabilities relating to Constellation Employees’ (and Deceased Constellation Employee survivors’ and beneficiaries’) (a) benefits and notional account balances accrued under the Exelon Executive Deferred Compensation Plans prior to the Distribution Date, as applicable, and (b) benefits and notional account balances that accrue under the Constellation Executive Deferred Compensation Plans on and after the Distribution Date, as applicable. All deferral and distribution elections made by Constellation Employees under the Exelon Executive Deferred Compensation Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Executive Deferred Compensation Plans, and for such purpose, and subject to Section 409A of the Code, any distributions payable upon a Constellation Employee’s separation from service shall be payable upon his or her separation from service with the Constellation Group. All beneficiary designations made by Constellation Employees and by survivors and beneficiaries of Deceased Constellation Employees under the Exelon Executive Deferred Compensation Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Executive Deferred Compensation Plans until such beneficiary designations are replaced or revoked by the Constellation Employee (or the survivor or beneficiary of the Deceased Constellation Employee) who made the beneficiary designation. Following the Distribution Date, the Exelon Group shall have no liability or obligation with respect to the benefits accrued by such Constellation Employees or by such survivors or beneficiaries of Deceased Constellation Employees under any of the Exelon Executive Deferred Compensation Plans or with respect to any benefits accrued under the Constellation Executive Deferred Compensation Plans. Effective on or as soon as administratively practicable after the Distribution Date, Constellation shall establish one or more grantor trusts to be a source of providing benefits under the Constellation Executive Deferred Compensation Plans (the “**Constellation Rabbi Trusts**”) that shall have substantially the same terms and conditions as the grantor trusts maintained by Exelon or its Subsidiaries for the corresponding Exelon Executive Deferred Compensation Plans (the “**Exelon Rabbi Trusts**”). As soon as administratively practicable after the Distribution Date, Exelon shall cause the Exelon Rabbi Trusts to transfer to the Constellation Rabbi Trusts cash, life insurance policies or other assets in an amount equal to the proportion of the assets held in the applicable Exelon Rabbi Trust that are reflected in the financial statements of the members of the Constellation Group. To the extent the assets held in an Exelon Rabbi Trust are reflected in the financial statements of BSC, the percentage of such assets to be transferred to a Constellation Rabbi Trust shall be commensurate with the percentage of the projected benefit obligation or aggregate account balances, as applicable, of all current and former BSC employees that is allocated to and assumed by Constellation or a member of the Constellation Group pursuant to this Section 3.3(a). Exelon or the members of the Exelon Group shall retain all liabilities and obligations under the Exelon Executive Deferred Compensation Plans other than those assumed by Constellation or a member of the Constellation Group pursuant to this Section 3.3(a), and thereafter (except as described in Schedule B) the Exelon Group shall have no liability whatsoever with respect to the deferred compensation benefits of Constellation Employees and the Constellation Group shall have no liability whatsoever with respect to the deferred compensation benefits of Exelon Employees.

(b) **Deferred Compensation Unit Plans.** Notwithstanding Section 3.3(a), the Exelon Group shall retain and be responsible for all obligations under the Commonwealth Edison Company Deferred Compensation Plan or the Unicom Corporation Deferred Compensation Unit Plan. On or before the Distribution Date, the Constellation Group shall make a payment to the Exelon Group in an amount the parties agree reflects an estimate of the actuarial present value of such obligations that relate to Constellation Employees.

(c) **Director Plans.** Effective on or before the Distribution Date, Constellation shall adopt, establish and maintain nonqualified deferred compensation plans for the benefit of nonemployee directors of Constellation (the “**Constellation Director Deferred Compensation Plans**”) that in each case shall have substantially the same terms and conditions as the Exelon Director Deferred Compensation Plans in which Constellation Directors participate. As of the Distribution Date, Constellation shall assume and thereafter be solely responsible for all existing and future liabilities relating to Constellation Directors’ (a) benefits and notional account balances accrued under the Exelon Director Deferred Compensation Plans prior to the Distribution Date, as applicable, and (b) benefits and notional account balances that accrue under the Constellation Director Deferred Compensation Plans on and after the Distribution Date, as applicable. All deferral and distribution elections made by Constellation Directors under the Exelon Director Deferred Compensation Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Director Deferred Compensation Plans, and for such purpose, and subject to Section 409A of the Code, any distributions payable upon a Constellation Director’s separation from service shall be payable upon his or her separation from service with the Constellation Group. All beneficiary designations made by Constellation Directors under the Exelon Director Deferred Compensation Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Director Deferred Compensation Plans until such beneficiary designations are replaced or revoked by the Constellation Director (or his or her survivor or beneficiary) who made the beneficiary designation. Following the Distribution Date, the Exelon Group shall have no liability or obligation with respect to the benefits accrued by such Constellation Directors under any of the Exelon Director Deferred Compensation Plans or with respect to any benefits accrued under the Constellation Director Deferred Compensation Plans. Any amounts held in an Exelon Rabbi Trust for the benefit of nonemployee directors shall remain in such Exelon Rabbi Trust. Exelon shall retain all liabilities and obligations under the Exelon Director Deferred Compensation Plans other than those assumed by Constellation or a member of the Constellation Group pursuant to this Section 3.3(b), and thereafter neither the Exelon Group nor the Constellation Group shall have any liability whatsoever with respect to the director deferred compensation plans of the other group.

## ARTICLE IV

### WELFARE PLANS

**4.1 Establishment of the Constellation Welfare Plans.** Effective on or before the Distribution Date, Constellation shall adopt, establish and maintain Welfare Plans for the benefit of employees of the Constellation Group that have substantially the same terms and conditions as the Exelon Welfare Plans (the “*Constellation Welfare Plans*”).

**4.2 Coverage of Constellation Employees and Surviving Dependents.** As of the Distribution Date, each Constellation Employee and each Surviving Dependent shall become eligible to participate in the Constellation Welfare Plans, subject to the terms of such plans. To the extent applicable to any Constellation Welfare Plans in which Constellation Employees or Surviving Dependents become eligible as of the Distribution Date that provide benefits similar to the benefits that had been provided to such persons under an Exelon Welfare Plan immediately prior to such date, Constellation shall cause the Constellation Welfare Plans to recognize all coverage and contribution elections made by the Constellation Employees and Surviving Dependents under the Exelon Welfare Plans in effect for the period immediately prior to the Distribution Date and shall apply such elections under the Constellation Welfare Plans for the remainder of the period or periods for which such elections are by their terms applicable. All beneficiary designations made by Constellation Employees and Surviving Dependents under the Exelon Welfare Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Welfare Plans until such beneficiary designations are replaced or revoked by the Constellation Employee or Surviving Dependent who made the beneficiary designation. With respect to each Constellation Employee and Surviving Dependent, each Constellation Welfare Plan shall provide that for purposes of determining eligibility to participate and calculation of, and entitlement to, benefits, service by the Constellation Employee (or, in the case of a Surviving Dependent, the Deceased Constellation Employee) prior to the Distribution Date with Exelon and its Subsidiaries shall be treated as service with the Constellation Group. Constellation shall cause each Constellation Welfare Plan to waive any waiting periods, evidence of insurability requirements, and the application of any preexisting condition limitations with respect to each Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) and Surviving Dependent. Constellation shall cause each Constellation Welfare Plan to honor any deductible, co-payment and out-of-pocket maximums incurred by each Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) and Surviving Dependent under the Exelon Welfare Plans in which such Constellation Employee or Surviving Dependent participated immediately prior to the Distribution Date, if any, in satisfying any deductibles, co-payments or out-of-pocket maximums under the Constellation Welfare Plans in which such Constellation Employee or Surviving Dependent is eligible to participate after the Distribution Date in the same plan year in which any such deductibles, co-payments or out-of-pocket maximums were incurred. All amounts credited or applied to any annual or lifetime benefit limitation under an Exelon Welfare Plan with respect to a Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) or Surviving Dependent shall be credited or applied to the annual or lifetime benefit limitation for such Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) or Surviving Dependent under the corresponding Constellation Welfare Plan.

### 4.3 Welfare Plan Liabilities.

(a) **Constellation Liabilities.** Except as provided in clause (b) of this Section 4.3, Constellation shall, or shall cause a member of the Constellation Group or the Constellation Welfare Plans, as applicable, to assume, retain and be responsible for all claims for welfare benefits (and for any Liabilities arising as a result of such claims) incurred with respect to any Constellation Employee (and, if applicable, such Constellation Employee's participating spouse and/or dependents) or Surviving Dependent on or after the Distribution Date under the Constellation Welfare Plans, and none of the Exelon Group nor the Exelon Welfare Plans shall assume or retain any such Liabilities.

(b) **Exelon Liabilities.** Except as provided in Section 4.5, Exelon and the Exelon Welfare Plans shall continue to be responsible for all claims for welfare benefits (and for any Liabilities arising as a result of such claims) incurred with respect to any Constellation Employee (and, if applicable, such Constellation Employee's participating spouse and/or dependents) or Surviving Dependent prior to the Distribution Date (except with respect to any claims for short-term disability benefits and benefits payable pursuant to the Mutual Beneficiary Association or supplemental disability plan for Constellation Employees represented by Local 15 that are due and payable on and after the Distribution Date, but incurred prior to the Distribution Date), whether such claims have been paid or remain unpaid as of such date, and none of the Constellation Group nor the Constellation Welfare Plans shall assume or retain any such Liabilities.

(c) **Claims Incurred.** Claims for group health plan benefits shall be considered to be incurred prior to the Distribution Date if the services related to such claims were provided or commenced, as determined by the plan administrator prior to the Distribution Date. Claims for all other welfare benefits shall be considered to be incurred prior to the Distribution Date if the date of loss occurred prior to the Distribution Date.

**4.4 COBRA and HIPAA Liabilities.** From and after the Distribution Date, the Constellation Group and the Constellation Welfare Plans shall be responsible for the continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985 and the portability requirements under the Health Insurance Portability and Accountability Act of 1996 with respect to all Constellation Employees and their qualified beneficiaries.

**4.5 Flexible Spending Accounts.** As of the Distribution Date, each Constellation Employee shall become eligible to participate in a flexible spending account plan established by Constellation (the "**Constellation FSA**"), subject to the terms of such plan. Effective as of the Distribution Date, the Constellation FSA shall credit or debit the applicable account of each Constellation Employee who, as of the Distribution Date, was a participant in the flexible spending account plan maintained by Exelon (the "**Exelon FSA**"), with an amount equal to the balance of his or her account under the Exelon FSA as of the Distribution Date, and shall continue his or her elections thereunder. If the aggregate amount of claims made against all Constellation Employees' Exelon FSA accounts prior to the Distribution Date exceed the aggregate of the amounts credited to such accounts at the Distribution Date, Constellation shall reimburse Exelon for the amount of such difference. If the aggregate of the amounts credited to all Constellation Employees' Exelon FSA accounts at the Distribution Date exceed the aggregate amount of claims made against such account prior to the Distribution Date, Exelon shall reimburse Constellation for the amount of such difference. The Constellation FSA shall assume responsibility as of the Distribution Date for all outstanding dependent care and medical care claims under the Exelon FSA of each Constellation Employee, regardless of when the claim was incurred, and shall assume and perform the obligations from and after the Distribution Date. From and after the Distribution Date, Exelon shall provide Constellation with such information as Constellation may reasonably request to enable it to verify any claims information pertaining to the Exelon FSA.

#### 4.6 Retiree Welfare Plans.

(a) **Constellation Retiree Welfare Plans.** Effective on or before the Distribution Date, Constellation shall adopt, establish and maintain retiree Welfare Plans that have substantially the same terms and conditions as the Exelon Retiree Welfare Plans (the “**Constellation Retiree Welfare Plans**”).

(b) **Coverage of Constellation Employees and Surviving Dependents.** As of the Distribution Date, each Constellation Employee and each Surviving Dependent shall become eligible to participate in the Constellation Retiree Welfare Plans established by Constellation, subject to the terms of such plans. To the extent applicable to any Constellation Retiree Welfare Plans in which Constellation Employees or Surviving Dependents become eligible as of the Distribution Date that provide benefits similar to the benefits that had been provided to such persons under an Exelon Retiree Welfare Plan immediately prior to such date, Constellation shall cause the Constellation Retiree Welfare Plans to recognize all coverage and contribution elections made by the Constellation Employees and Surviving Dependents under the Exelon Retiree Welfare Plans in effect for the period immediately prior to the Distribution Date and shall apply such elections under the Constellation Retiree Welfare Plans for the remainder of the period or periods for which such elections are by their terms applicable. All beneficiary designations made by Constellation Employees and Surviving Dependents under the Exelon Retiree Welfare Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Constellation Retiree Welfare Plans until such beneficiary designations are replaced or revoked by the Constellation Employee or Surviving Dependent who made the beneficiary designation. With respect to each Constellation Employee and Surviving Dependent, each Constellation Retiree Welfare Plan shall provide that for purposes of determining eligibility to participate and entitlement to benefits, service by the Constellation Employee (or, in the case of a Surviving Dependent, the Deceased Constellation Employee) prior to the Distribution Date with Exelon and its Subsidiaries shall be treated as service with the Constellation Group. Constellation shall cause each Constellation Retiree Welfare Plan to waive any waiting periods, evidence of insurability requirements, and the application of any preexisting condition limitations with respect to each Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) and Surviving Dependent. Constellation shall cause each Constellation Retiree Welfare Plan to honor any deductible, co-payment and out-of-pocket maximums incurred by each Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) and Surviving Dependent under the Exelon Retiree Welfare Plans in which such Constellation Employee or Surviving Dependent participated immediately prior to the Distribution Date, if any, in satisfying any deductibles, co-payments or out-of-pocket maximums under the Constellation Retiree Welfare Plans in which such Constellation Employee or Surviving Dependent is eligible to participate after the Distribution Date in the same plan year in which any such deductibles, co-payments or out-of-pocket maximums were incurred. All amounts credited or applied to any annual or lifetime benefit limitation under an Exelon Retiree Welfare Plan with respect to a Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) or Surviving Dependent shall be credited or applied to the annual or lifetime benefit limitation for such Constellation Employee (and, if applicable, such Constellation Employee’s participating spouse and/or dependents) or Surviving Dependent under the corresponding Constellation Retiree Welfare Plan.

(c) **Retiree Welfare Plan Liabilities.**

(1) **Constellation Liabilities.** Except as provided in clause (2) of this Section 4.6(c), Constellation shall, or shall cause a member of the Constellation Group or the Constellation Retiree Welfare Plans, as applicable, to assume, retain and be responsible for all claims for retiree welfare benefits (and for any Liabilities arising as a result of such claims) incurred with respect to any Constellation Employee (and, if applicable, such Constellation Employee's participating spouse and/or dependents) or Surviving Dependent on or after the Distribution Date under the Constellation Retiree Welfare Plans, and none of the Exelon Group nor the Exelon Retiree Welfare Plans shall assume or retain any such Liabilities.

(2) **Exelon Liabilities.** Exelon and the Exelon Retiree Welfare Plans shall continue to be responsible for all claims for retiree welfare benefits (and for any Liabilities arising as a result of such claims) incurred with respect to any Constellation Employee (and, if applicable, such Constellation Employee's participating spouse and/or dependents) or Surviving Dependent prior to the Distribution Date, whether such claims have been paid or remain unpaid as of such date, and none of the Constellation Group nor the Constellation Retiree Welfare Plans shall assume or retain any such Liabilities.

(3) **Claims Incurred.** Claims for retiree health benefits shall be considered to be incurred prior to the Distribution Date if the services related to such claims were provided or commenced, as determined by the plan administrator prior to the Distribution Date. Claims for all other retiree welfare benefits shall be considered to be incurred prior to the Distribution Date if the date of loss occurred prior to the Distribution Date.

#### 4.7 Welfare Plan VEBAs.

(a) **Constellation VEBA Trusts.** Effective on or before the Distribution Date, Constellation shall adopt, establish and maintain one or more Constellation VEBAs that in each case have substantially the same terms and conditions as the Exelon VEBAs and are intended to be tax-exempt under Section 501(c)(9) of the Code. As soon as practicable after the adoption of the Constellation VEBAs, Constellation shall submit applications for determination to the IRS that each of the Constellation VEBAs is exempt from federal income tax under Section 501(a) of the Code, and shall take any actions not inconsistent with Constellation's other general commitments contained in this Agreement and make any amendments necessary to receive such determination.

(b) **Transfer of VEBA Assets—Retiree Health Benefits.** As soon as administratively practicable following the Distribution Date, the Exelon Group shall cause the trustees of the Exelon VEBAs maintained for the benefit of retired employees to transfer to the Constellation VEBAs a portion of the assets equal to a proportionate amount of the accumulated post-retirement benefit obligation ("APBO") under FASB Accounting Standards Codification Topic 715 ("ASC 715").

(c) **Transfer of VEBA Assets—Mutual Beneficiaries Association.** As soon as administratively practicable following the Distribution Date, an amount of assets will be transferred from the Exelon Corporation Mutual Beneficiaries Association ("**MBA**") to the corresponding Constellation VEBA equal to the sum of the cash and contributions receivables reflected on the financial statements of the MBA as of the Distribution Date which are attributable to payroll contributions of the Constellation Group entities which are participating employers in the MBA (but limited, with respect to such contributions attributable to Shared Services Employees, to those employees who are or become employees of a Constellation Group entity immediately prior to the Distribution Date). In addition, an amount of liability will be transferred from the MBA to such Constellation VEBA in an amount equal to the accounts payable reflected on the financial statements as of the Distribution Date of each participating employer in the MBA which is a Constellation Group entity (but limited, with respect to such liabilities of Shared Services Employees, to those employees who are or become employees of a Constellation Group entity immediately before the Distribution Date).

(d) **Transfer of VEBA Assets—Active Employees.** As soon as administratively practicable following the Distribution Date, including any time needed to determine payment of incurred but not reported claims and its impact on the transfer, an amount of assets will be transferred from the Exelon Corporation Employees' Benefit Trust ("**EBT**") to the corresponding Constellation VEBA equal to a proportional share of the trust balance, if any, based on 2021 payroll contributions assuming 40% of BSC's payroll contributions are allocated to the Constellation Group.

## ARTICLE V

### NON-ERISA BENEFIT ARRANGEMENTS

**5.1 Constellation Non-ERISA Benefit Arrangements.** Effective on or before the Distribution Date, the Constellation Group shall adopt, establish and maintain Non-ERISA Benefit Arrangements for the benefit of the Constellation Employees that have substantially the same terms and conditions as the Exelon Non-ERISA Benefit Arrangements.

**5.2 Short-Term Cash Incentives.** To the extent they are not paid prior to the Distribution Date, Exelon shall pay to all Exelon Employees and Constellation shall pay to all Constellation Employees all annual bonuses and any other short-term cash incentives payable for the 2021 performance period, in accordance with the terms of the applicable annual bonus or incentive program. Effective as of the Distribution Date, the Constellation Group shall establish an annual bonus or incentive program for the benefit of the Constellation Employees that provides for the payment of annual bonuses for the performance period that begins on January 1, 2022 and for subsequent fiscal years that begin after the Distribution Date, and the Constellation Group shall be solely responsible for the payment of all bonuses earned under such program. The Exelon Group shall be solely responsible for the payment of annual bonuses earned by Exelon Employees for the performance period that begins on January 1, 2022 and for subsequent fiscal years that begin after the Distribution Date.

**5.3 Long-Term Cash Incentives.** Effective on or before the Distribution Date, the Constellation Group shall establish long-term cash incentive plans and programs for the benefit of Constellation Employees that have substantially the same terms and conditions as the long-term cash incentive plans and programs maintained by Exelon and its Subsidiaries immediately prior to the Distribution Date. Effective as of the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume, and the Exelon Group shall have no liability or obligation with respect to, all long-term cash incentive benefits payable to Constellation Employees after the Distribution Date. Following the Distribution Date, the Constellation Group shall be solely responsible for administering and paying all benefits under the applicable long-term cash incentive plans and programs to such Constellation Employees, including Former Shared Services Employees who are considered Constellation Employees. Exelon shall remain solely responsible for administering and paying all benefits under the applicable long-term cash incentive plans and programs to all Exelon Employees, including Former Shared Services Employees who are considered Exelon Employees.

**5.4 Severance.** Effective on or before the Distribution Date, the Constellation Group shall establish severance plans, arrangements and policies for the benefit of Constellation Employees that have substantially the same terms and conditions as the severance plans, arrangements and policies maintained by Exelon and its Subsidiaries immediately prior to the Distribution Date (including without limitation the Exelon Senior Management Severance Plan). Except as set forth on Schedule B, effective as of the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume, and the Exelon Group shall have no liability or obligation with respect to, the severance benefits provided to such Constellation Employees. Except as set forth on Schedule B, following the Distribution Date, the Constellation Group shall be solely responsible for administering and paying all benefits under the applicable severance plans, arrangements, policies or agreements to such Constellation Employees, including Former Shared Services Employees who are considered Constellation Employees. Exelon shall remain solely responsible for administering and paying all benefits under the applicable severance plans, arrangements, policies or agreements to all Exelon Employees, including Former Shared Services Employees who are considered Exelon Employees. It is not intended that any Constellation Employee will be eligible for termination or severance payments or benefits from any member of the Exelon Group or the Constellation Group as a result of the transfer or change of employment from the Exelon Group to the Constellation Group or the transfer or change of employment from the Constellation Group to the Exelon Group, in either case in connection with the Distribution. Notwithstanding the preceding sentence, (i) in the event that any such termination or severance payments or benefits become payable on account of such transfer, change or the refusal of a Constellation Employee to accept employment with the Constellation Group, the Constellation Group shall indemnify each of the Exelon Group members for the amount of such termination or severance payments or benefits and (ii) in the event that any such termination or severance payments or benefits become payable on account of such transfer, change or the refusal of an Exelon Employee to accept employment with the Exelon Group, the Exelon Group shall indemnify each of the Constellation Group members for the amount of such termination or severance payments or benefits.

**5.5 Fringe Benefits.** Effective on or before the Distribution Date, the Constellation Group shall establish fringe benefit plans (“*Constellation Fringe Benefit Plans*”) that have terms that are substantially similar to the fringe benefit plans maintained by the Exelon Group (“*Exelon Fringe Benefit Plans*”). As of the Distribution Date, the Constellation Employees shall cease to participate in the Exelon Fringe Benefit Plans, and shall commence participation in the Constellation Fringe Benefit Plans in accordance with their terms. As of the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume all liabilities and obligations to the Constellation Employees under the Exelon Fringe Benefit Plans and be solely responsible for administering and paying the benefits thereunder, regardless of whether the event giving rise to such obligation occurred before, at or after the Distribution Date, and the Exelon Group shall be relieved of all such liabilities and obligations. The Exelon Group shall retain all liabilities and obligations to Exelon Employees under the Exelon Fringe Benefit Plans and be solely responsible for administering and paying the benefits thereunder.

## ARTICLE VI

### STOCK PLANS

**6.1 Constellation Stock Plans.** Effective on or before the Distribution Date, the Constellation Group shall adopt, establish and maintain a Constellation Stock Plan that has substantially the same terms and conditions as the Exelon Corporation 2020 Long-Term Incentive Plan (the “*Constellation Stock Plan*”).

## 6.2 Restricted Stock Units; Deferred Stock Units.

(a) **Stock Awards Held by Constellation Employees and Constellation Non-Employee Directors.** Exelon and Constellation shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.2(a) by the Constellation Board and the Exelon Compensation Committee or Exelon Corporate Governance Committee pursuant to the terms of the applicable Exelon Stock Plan, the applicable Constellation Stock Plan and this Agreement, so that each Exelon RSU Award and each Exelon DSU Award (collectively, the “**Exelon Stock Awards**”) held immediately prior to the Distribution by a Constellation Employee or Constellation Director shall be replaced, respectively, with a substitute Constellation restricted stock unit award (a “**Substitute Constellation RSU Award**”), or substitute Constellation deferred stock unit award (a “**Substitute Constellation DSU Award**,” and collectively together with the Substitute Constellation RSU Awards, the “**Substitute Constellation Stock Awards**”). The number of Constellation restricted stock units and deferred stock units, as applicable, subject to each Substitute Constellation Stock Award shall be equal to the number of Exelon restricted stock units or deferred stock units, as applicable, subject to the applicable Exelon Stock Award held by the participant immediately prior to the Distribution multiplied by a fraction, the numerator of which is the Exelon Pre-Distribution Stock Price, and the denominator of which is the Constellation Post-Distribution Stock Price (such fraction, the “**Constellation Conversion Ratio**”). Each Substitute Constellation Stock Award shall vest and be payable based on the holder’s employment or service with the Constellation Group. Each Substitute Constellation Stock Award shall have substantially the same terms and conditions as the corresponding Exelon Stock Award, except as provided herein.

(b) **Stock Awards Held by Persons Other Than Constellation Employees and Constellation Directors.** Exelon shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.2(b) by the Exelon Compensation Committee or Exelon Corporate Governance Committee pursuant to the terms of the applicable Exelon Stock Plan and this Agreement, so that each Exelon Stock Award held immediately prior to the Distribution by any person who is not a Constellation Employee or Constellation Director shall be adjusted (an “**Adjusted Exelon Stock Award**”). The number of Exelon restricted stock units and deferred stock units, as applicable, subject to each Adjusted Exelon Stock Award shall be equal to the number of Exelon restricted stock units and deferred stock units, as applicable, subject to the applicable Exelon Stock Award held by a participant immediately prior to the Distribution multiplied by a fraction, the numerator of which is the Exelon Pre-Distribution Stock Price, and the denominator of which is the Exelon Post-Distribution Stock Price (such fraction, the “**Exelon Conversion Ratio**”). Each Adjusted Exelon Stock Award shall have substantially the same terms and conditions as the corresponding Exelon Stock Award, except as provided herein.

## 6.3 Performance Share Awards.

(a) **Performance Share Awards Held by Constellation Employees (Other than Former Shared Services Employees).**

(1) **2019 Performance Share Awards.** To the extent not paid prior to the Distribution Date, Constellation shall pay to each Constellation Employee, as applicable, other than a Former Shared Services Employee, a cash payment equal to the value of such Constellation Employee’s Performance Share Award that was earned and vested with respect to the 2019-2021 performance period, as approved by the Exelon Compensation Committee.

(2) **2020 Performance Share Awards.** Exelon and Constellation shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.3(b)(2) by the Constellation Board and the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan, the applicable Constellation Stock Plan and this Agreement, so that each Exelon Performance Share Award granted under an Exelon Stock Plan in 2020 and held immediately prior to the Distribution by a Constellation Employee, other than a Former Shared Services Employee, will be replaced with a Substitute Constellation RSU Award granted under the applicable Constellation Stock Plan. The number of Exelon Shares deemed to have been earned pursuant to the Exelon Performance Share Award shall be determined by the Exelon Compensation Committee based on projected performance results through the end of the applicable performance period. The number of such Exelon Shares that are deemed to have been earned shall then be converted into a Substitute Constellation RSU Award by multiplying the number of such earned Exelon Shares by the Constellation Conversion Ratio, with the resulting number being the number of Constellation Shares subject to the Substitute Constellation RSU Award. Each Substitute Constellation RSU Award shall continue to vest based solely on holder's service with the Constellation Group, and shall have the same terms and conditions as the corresponding Exelon Performance Share Award, except as provided herein.

(3) **2021 Performance Share Awards.** Exelon and Constellation shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.3(b)(3) by the Constellation Board and the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan, the applicable Constellation Stock Plan and this Agreement, so that each Exelon Performance Share Award granted under an Exelon Stock Plan in 2021 and held immediately prior to the Distribution by any Constellation Employee, other than a Former Shared Services Employee, will be replaced with a substitute Constellation performance share award (a "**Substitute Constellation Performance Share Award**") granted under the applicable Constellation Stock Plan. The target number of Constellation Shares subject to the Substitute Constellation Performance Share Award will be equal to the target number of Exelon Shares subject to the applicable Exelon Performance Share Award held by the participant immediately prior to the Distribution, adjusted by the total shareholder return multiplier for the period ending December 31, 2021, as approved by the Exelon Compensation Committee, and then multiplied by the Constellation Conversion Ratio. Each Substitute Constellation Performance Share Award shall have substantially the same terms and conditions as the corresponding Exelon Performance Share Award; provided, however, that the applicable performance criteria with respect to any performance period following the Distribution Date shall be determined by the Constellation Board in its sole discretion.

(b) **Performance Share Awards Held by Exelon Employees.**

(1) **2019 Performance Share Awards.** To the extent not paid prior to the Distribution Date, Exelon shall pay to each Exelon Employee and each Former Shared Services Employee, as applicable, a cash payment equal to the value of such Exelon Employee's or Former Shared Services Employee's Performance Share Award that was earned and vested with respect to the 2019-2021 performance period, as approved by the Exelon Compensation Committee.

(2) **2020 Performance Share Awards.** Exelon shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.3(b)(2) by the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan and this Agreement, so that each Exelon Performance Share Award granted under an Exelon Stock Plan in 2020 and held immediately prior to the Distribution by an Exelon Employee shall be adjusted and converted into a time-based Exelon RSU Award, which shall be paid under the terms of the Exelon Stock Plan and applicable award agreement. The number of Exelon Shares earned pursuant to the Exelon Performance Share Award shall be determined by the Exelon Compensation Committee based on projected performance results through the end of the applicable performance period. The number of such Exelon Shares that are deemed earned shall then be multiplied by the Exelon Conversion Ratio, with the resulting number being the number of Exelon Shares subject to the Exelon RSU Award. Each such Exelon RSU Award shall continue to vest based solely on holder's service with the Exelon Group, and shall have the same terms and conditions as the corresponding Exelon Performance Share Award, except as provided herein.

(3) **2021 Performance Share Awards.** Exelon shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.3(b)(3) by the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan and this Agreement, so that each Exelon Performance Share Award granted under an Exelon Stock Plan in 2021 and held immediately prior to the Distribution by an Exelon Employee will be adjusted (an "**Adjusted Exelon Performance Share Award**") and paid under the terms of the Exelon Stock Plan and applicable award agreement. The target number of Exelon Shares subject to the Adjusted Exelon Performance Share Award will be equal to the target number of Exelon Shares subject to the applicable Exelon Performance Share Award held by a participant immediately prior to the Distribution, adjusted by the total shareholder return multiplier for the period ending December 31, 2021, as approved by the Exelon Compensation Committee, multiplied by the Exelon Conversion Ratio. Each Adjusted Exelon Performance Share Award shall have substantially the same terms and conditions as the corresponding Exelon Performance Share Award; provided, however, that the applicable performance goals with respect to any performance period following the Distribution Date shall be equitably adjusted by the Exelon Compensation Committee in its sole discretion.

#### 6.4 Stock Options.

(a) **Stock Options Held by Constellation Employees (Other than Former Shared Services Employees).** Exelon and Constellation shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.4(a) by the Constellation Board and the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan, the applicable Constellation Stock Plan and this Agreement, so that each Exelon Stock Option Award held immediately prior to the Distribution by any Constellation Employee, other than a Former Shared Services Employee, shall be replaced with a substitute Constellation stock option award granted under the applicable Constellation Stock Plan (a “**Substitute Constellation Stock Option Award**”). The number of Constellation Shares subject to each Substitute Constellation Stock Option Award shall be equal to the number of Exelon Shares subject to the applicable Exelon Stock Option Award held by the participant immediately prior to the Distribution multiplied by Constellation Conversion Ratio, and the applicable exercise price for each Substitute Constellation Stock Option Award shall be equal to the exercise price of the applicable Exelon Stock Option Award held by the participant immediately prior to the Distribution divided by the Constellation Conversion Ratio. Each Substitute Constellation Stock Option Award shall vest and be payable based on the holder’s employment with the Constellation Group and shall have the same terms and conditions as the corresponding Exelon Stock Option Award, except as provided herein.

(b) **Stock Options Held by Exelon Employees.** Exelon shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.4(b) by the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan and this Agreement, so that each Exelon Stock Option Award held immediately prior to the Distribution by an Exelon Employee shall be adjusted (an “**Adjusted Exelon Stock Option Award**”). The number of Exelon Shares subject to each Adjusted Exelon Stock Option Award shall be equal to the number of Exelon Shares subject to the applicable Exelon Stock Option Award held by the participant immediately prior to the Distribution multiplied by the Exelon Conversion Ratio, and the applicable exercise price for each Adjusted Exelon Stock Option Award shall be equal to the exercise price of the applicable Exelon Stock Option Award held by the participant immediately prior to the Distribution divided by the Exelon Conversion Ratio. Each Adjusted Exelon Stock Option Award shall have the same terms and conditions as the corresponding Exelon Stock Option Award, except as provided herein.

**6.5 Awards Held by Former Shared Services Employees.** Exelon shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.5 by the Exelon Compensation Committee pursuant to the terms of the applicable Exelon Stock Plan and this Agreement, so that each Exelon Performance Share Award and Exelon Stock Option Award held immediately prior to the Distribution by a Former Shared Services Employee shall be adjusted in the same manner as such awards that are held by Exelon Employees, in accordance with Section 6.3(b) and 6.4(b), above.

## 6.6 Employee Stock Purchase Plans.

(a) **Establishment of the Constellation Employee Stock Purchase Plan.** On or before the Distribution Date, Constellation shall adopt an employee stock purchase plan (the “*Constellation ESPP*”) for the benefit of employees of the Constellation Group that has substantially the same terms and conditions as the Exelon Corporation Employee Stock Purchase Plan (the “*Exelon ESPP*”). The first offering period under the Constellation ESPP shall commence on or after the Distribution Date, as of a date determined by the Constellation Board.

(b) **Treatment of Exelon Employee Stock Purchase Plan.** The Exelon Board or Compensation Committee shall make such adjustments to the offering period that is pending under the Exelon ESPP as of the Distribution Date as it determines to be appropriate and in compliance with the terms of the Exelon ESPP.

**6.7 Approval and Terms of Equity Awards.** By approval of the Constellation Board and the Exelon Compensation Committee or the Exelon Corporate Governance Committee pursuant to Sections 6.1, 6.2, 6.3, 6.4, 6.5 and 6.6, Constellation, as issuer of substitute and replacement awards provided hereunder, and Exelon, as sole shareholder of Constellation, shall adopt and approve, respectively, the issuance of the substitute and replacement awards provided for herein. Except as set forth above, the substitute Constellation equity awards shall be subject to the terms of the Constellation Stock Plan and the applicable award agreements under the Exelon Stock Plan, except that references in such outstanding substitute and replacement Constellation awards to “Board” and “Committee” shall mean the Board, Compensation Committee, Corporate Governance Committee or any other designated committee of Constellation (as applicable) and references to the “Company” shall mean Constellation. Notwithstanding the foregoing, substitute awards made under Constellation Stock Plans pursuant to Constellation’s obligations under this Agreement shall take into account all employment and service with both Exelon and Constellation, and their respective Subsidiaries and Affiliates, for purposes of determining when such awards vest and terminate.

**6.8 No Change in Control.** The Distribution will not constitute a “change in control” for purposes of Exelon equity awards that are outstanding as of the Distribution Date.

## ARTICLE VII

### COMPENSATION MATTERS AND GENERAL BENEFIT MATTERS

**7.1 Cessation of Participation in Exelon Plans and Exelon Non-ERISA Benefit Arrangements.** Except as otherwise provided in this Agreement or as required by the terms of any Exelon Plan or Exelon Non-ERISA Benefit Arrangement, or by applicable law, Exelon and Constellation shall take any and all action as shall be necessary or appropriate so that participation in Exelon Plans and Exelon Non-ERISA Benefit Arrangements by all Constellation Employees shall terminate as of the close of business on the Distribution Date and the members of the Constellation Group shall cease to be participating employers under the terms of such Exelon Plans and Exelon Non-ERISA Benefit Arrangements as of such time.

**7.2 Assumption of Certain Employee Related Obligations.** Except as otherwise provided in this Agreement, effective as of the Distribution, Constellation shall, or shall cause a member of the Constellation Group to, assume, and the Exelon Group shall not have any further liability for, the following agreements, obligations and liabilities, and Constellation shall, and shall cause the members of the Constellation Group to, indemnify, defend and hold harmless each of the Exelon Indemnitees from and against any and all Losses incurred or suffered by one or more of the Exelon Indemnitees in connection with, relating to, arising out of or due to, directly or indirectly, any of the following:

- (a) all agreements entered into between any Exelon Group member and any Constellation Employee, independent contractor or other service provider providing services related to the Constellation Business;
- (b) all collective bargaining agreements, collective agreements, trade union agreements or works council agreements to the extent they cover Constellation Employees, including (i) Local 15 (five Northern Illinois nuclear plants); (ii) IBEW Local 97 (Fitzpatrick and Nine Mile Point craft and security); (iii) IBEW Local 614 (legacy PECO power); (iv) IBEW Local 369 (Massachusetts plants – Mystic 7-9, Medway, Distrigas); (v) National Union of Nuclear Security Officers-Affiliated with LEOSU (Clinton and Braidwood Security); (vi) Security Professionals and Fire Professionals of America Local 238 (Quad Cities Security); (vii) Service Employees International Union (SEIU) Local 1 (Dresden and LaSalle Security); (viii) USSU Local 1 (Byron Security); (ix) United Government Security Officers of America (UGSOA) Local 12 (Limerick Security) and (x) United Government Security Officers of America (UGSOA) Local 12 (TMI Security). In addition, ExGen shall solely be bound by the ExGen-Local 15 Agreement, and ComEd and BSC shall solely be bound by the ComEd/BSC-Local 15 Agreement.
- (c) all wages, salary, incentive compensation, commissions and bonuses payable to Constellation Employees on or after the Distribution Date, without regard to when such wages, salary, incentive compensation, commissions or bonuses are or may have been earned;
- (d) all moving expenses and obligations related to relocation, repatriation, transfers or similar items incurred by or owed to any Constellation Employee;
- (e) all immigration-related, visa, work application or similar rights, obligations and liabilities to the extent they are related to any Constellation Employees, and for this purpose, the Exelon Group shall transfer to the Constellation Group all I-9s relating to Constellation Employees;
- (f) Except as provided below, all employment agreements, offer letters and letter agreements entered into between (i) any member of the Exelon Group or Constellation Group and (ii) any Constellation Employee providing for ongoing benefits and/or compensation for such Constellation Employee; and

(g) all liabilities and obligations whatsoever of the Constellation Business with respect to claims made by or with respect to Constellation Employees, or any other to the extent their employment duties related to the Constellation Business, relating to any employee benefit plan, program or policy not otherwise retained or assumed by a member of the Exelon Group pursuant to this Agreement, including such liabilities relating to actions or omissions of or by the Constellation Group or any officer, director, employee or agent thereof prior to the Distribution Date.

Notwithstanding anything to the contrary in this Agreement, if a currently effective employment agreement requires pension or retiree health benefits to be provided to a Former Shared Services Employee exclusively by a member of the Exelon Group, such member of the Exelon Group shall retain these obligations and liabilities.

**7.3 Employee Benefits in 2022.** Except as required by applicable law or the terms of a collective bargaining agreement, during the period beginning on the Distribution Date and ending on December 31, 2022, each of the Exelon Group and the Constellation Group shall continue to provide pension, retirement, nonqualified deferred compensation, active and retiree health and welfare, and severance benefits to their respective employees and retirees that are substantially the same as those provided as of the Distribution Date, except where such changes are negotiated through collective bargaining or are required by applicable law.

**7.4 Restrictive Covenants in Employment and Other Agreements.** To the extent permitted under applicable law, following the Distribution, the Constellation Group shall be considered to be successors to the Exelon Group for purposes of all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between any Exelon Group member and any Constellation Employee executed prior to the Distribution Date such that each Exelon Group member and each Constellation Group member shall all enjoy the rights and benefits under such agreements, with respect to their respective business operations; provided, however, that (a) in no event shall any Exelon Group member be permitted to enforce any restrictive covenants against any Constellation Employees in their capacity as employees of any Constellation Group member and (b) in no event shall any Constellation Group member be permitted to enforce the restrictive covenant agreements against any Exelon Employees in their capacity as employees of any Exelon Group member.

**7.5 Past Service Credit.** With respect to all Constellation Employees, as of the Distribution Date, the Constellation Group shall recognize all service recognized under the comparable Exelon Plans and Exelon Non-ERISA Benefit Arrangements for purposes of determining eligibility, participation, vesting and calculation of benefits under comparable plans and programs maintained by the Constellation Group, provided that there shall be no duplication of benefits for Constellation Employees under such Constellation Group plans and programs. Exelon will provide to Constellation copies of any records available to Exelon to document such service, plan participation and membership and cooperate with Constellation to resolve any discrepancies or obtain any missing data for purposes of determining benefit eligibility, participation, vesting and calculation of benefits with respect to the Constellation Employees. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, Exelon and Constellation shall each comply with all applicable Laws, regulations and internal policies and each party shall indemnify and hold harmless the other party from and against any and all Liability, claims, actions and damages that arise from a failure (by the indemnifying party) to so comply with all applicable Laws, regulations and internal policies applicable to such information.

**7.6 Accrued Vacation Days Off.** Effective as of the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, recognize and assume all liability for all vacation, holiday, sick leave and personal days off, including banked vacation, accrued by Constellation Employees as of the Distribution Date, and to credit each Constellation Employee with such days off accrual.

**7.7 Leaves of Absence.** The Constellation Group shall continue to apply all leave of absence policies as in effect immediately prior to the Distribution to inactive Constellation Employees who are on an approved leave of absence as of the Distribution Date. Leaves of absence taken by Constellation Employees prior to the Distribution Date shall be deemed to have been taken as employees of Constellation.

**7.8 Exelon Assets.** Except as otherwise set forth herein, Exelon shall retain all reserves, bank accounts, trust funds or other balances maintained with respect to Exelon Non-ERISA Benefit Arrangements.

**7.9 Further Cooperation; Personnel Records; Data Sharing.** The parties shall provide each other such records and information as reasonably necessary or appropriate to carry out their obligations under applicable Laws, under this Agreement or for the purposes of administering their respective plans, policies and employment-related agreements, including information relating to vesting, service, employment status and collective bargaining agreements. Each party shall be responsible for the accuracy of records and information provided to the other party pursuant to this Section 7.9 and shall indemnify such other party for any losses caused by inaccurate information that it has provided. Subject to applicable law, all information and records regarding employment and personnel matters of Constellation Employees shall be accessed, retained, held, used, copied and transmitted after the Distribution Date by Constellation in accordance with all Laws and policies relating to the collection, storage, retention, use, transmittal, disclosure and destruction of such records. Access to such records after the Distribution Date will be provided to Exelon in accordance with Article VIII of the Separation Agreement. Notwithstanding the foregoing, Exelon shall retain reasonable access to those records necessary for Exelon's continued administration of any plans or programs or administration of collective bargaining agreements on behalf of Constellation Employees after the Distribution Date, and Constellation shall retain reasonable access to those records necessary for Constellation's administration of any equity award, other compensation or benefit payable or administered by the Constellation Group after the Distribution Date or the continued administration of collective bargaining agreements, provided that such access shall be limited to individuals who have a job-related need to access such records. Exelon shall also retain copies of all confidentiality and non-compete agreements with any Constellation Employee in which Exelon has a valid business interest. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, Exelon and Constellation shall each comply with all applicable Laws, regulations and internal policies, and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions and damages that arise from a failure (by the indemnifying party) to so comply with all applicable Laws, regulations and internal policies applicable to such information.

## ARTICLE VIII

### GENERAL PROVISIONS

**8.1 Further Assurances.** Subject to the limitations or other provisions of this Agreement, (a) each Party shall, and shall cause the other members of its Group to, use commercially reasonable efforts (subject to, and in accordance with applicable Law) to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, and to assist and cooperate with the other Party in doing, all things reasonably necessary, proper or advisable to consummate and make effective the Transactions and to carry out the intent and purposes of this Agreement, and (b) neither Party shall, nor shall either Party allow any other member of its Group to, without the prior written consent of the other Party, take any action that would reasonably be expected to prevent or materially impede, interfere with or delay any of the Transactions. Without limiting the generality of the foregoing, where the cooperation of third parties, such as insurers or trustees, would be necessary in order for a Party to completely fulfill its obligations under this Agreement, such Party shall use commercially reasonable efforts to cause such third parties to provide such cooperation.

**8.2 Employment and Plan Rights.** Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that (a) this Agreement is not intended to create an employment-related contract between any member of the Exelon Group or the Constellation Group, on the one hand, and any employee or service provider, on the other, nor may any current or former employee or service provider rely on this Agreement as the basis for any breach of any employment-related contract claim against any member of the Exelon Group or Constellation Group, (b) nothing in this Agreement shall be deemed or construed to require any member of the Exelon Group or Constellation Group to continue to employ any particular employee or service provider for any period before or after the Distribution Date, (c) nothing in this Agreement shall be deemed or construed to limit the right of the Exelon Group or Constellation Group to terminate the employment of any employee or service provider at any time before or after the Distribution Date and (d) nothing in this Agreement shall be construed as establishing or amending any Pension Plan, Welfare Plan or Non-ERISA Benefit Arrangement, or any other plan, policy, agreement or arrangement for the benefit of any employee or any other person.

**8.3 Labor Relations.** To the extent required by applicable law or any Contract or arrangement with a labor union, works council or similar employee organization, each of the Exelon Group and the Constellation Group shall provide notice, engage in consultation and take any similar action which may be required on its part in connection with the Distribution and shall fully indemnify each member of the other group against any Liabilities arising from its failure to comply with such requirements.

**8.4 Administrative Complaints/Litigation.** Except as otherwise provided in this Agreement, following the Distribution Date, Constellation shall, or shall cause a member of the Constellation Group to, assume, and be solely liable for, the handling, administration, investigation and defense of Actions asserted at any time against Exelon or Constellation by, on behalf of, or in relation to any Constellation Employee (including any dependent or beneficiary of any Constellation Employee) or other person providing consulting, independent contractor or similar services in lieu of employment, to the extent such Actions arise out of or relate to employment with (or the provision of such services to) the Constellation Business or to any related compensation or benefits provided by or on behalf of the Constellation Business (including but not limited to ERISA benefit claims, claims asserting violation of occupational safety and health standards, claims asserting violations of employment standards, union grievances, or wrongful dismissal, discrimination or human rights and unemployment compensation claims). Any Losses arising from such Actions shall be deemed Constellation Liabilities under the Separation Agreement. In any class action or other multiparty Action, any included Action asserted by, on behalf of, or in relation to any Exelon Employee or other person providing consulting, independent contractor or similar services in lieu of employment, to the extent such Action arises out of or relates to employment with (or the provision of such services to) the Exelon Business, shall not constitute Constellation Liabilities, nor shall Constellation have responsibility for the handling, administration, investigation and defense of any such Action by, on behalf of, or in relation to any Exelon Employee or other person providing consulting, independent contractor or similar services in lieu of employment to the Exelon Business. Notwithstanding the foregoing, Actions described in this Section 8.4 shall not include any Action set forth in Schedule C hereto.

**8.5 Reimbursement and Indemnification.** The parties hereto agree to reimburse each other, within 30 days of receipt from the other party of appropriate verification, for all costs and expenses which each may incur on behalf of the other as a result of any of the Welfare Plans, Pension Plans and Non-ERISA Benefit Arrangements and, as contemplated by Section 5.4, any termination or severance payments or benefits. All liabilities retained, assumed or indemnified against by Constellation or a member of the Constellation Group pursuant to this Agreement shall be subject to indemnification under Section 9.2 of the Separation Agreement, and all liabilities retained, assumed or indemnified against by Exelon or a member of the Exelon Group pursuant to this Agreement shall be subject to indemnification under Section 9.3 of the Separation Agreement, and all such liabilities shall be subject to the indemnification procedures set forth in Article IX of the Separation Agreement.

**8.6 Negotiation and Dispute Resolution.** The parties agree that any dispute, controversy or claim between them with respect to the matters covered hereby shall be governed by and resolved in accordance with Article X of the Separation Agreement.

**8.7 Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and should not be deemed to confer upon third parties (including without limitation any Constellation Employee, any employee or service provider of the Exelon Group and any of their respective spouses, dependents or beneficiaries) any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

**8.8 Notices.** All notices, requests, permissions, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) five (5) Business Days following sending by registered or certified mail, postage prepaid, (ii) when sent, if sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, (iii) when delivered, if delivered personally to the intended recipient, and (iv) one (1) Business Day following sending by overnight delivery via a national courier service and, in each case, addressed to a Party at the following address for such Party (as updated from time to time by notice in writing to the other Party):

(a) If to Exelon:

Exelon Corporation  
10 South Dearborn Street  
Chicago, Illinois 60603  
Attention: General Counsel  
Email: [gayle.littleton@exeloncorp.com](mailto:gayle.littleton@exeloncorp.com)

(b) If to Constellation:

Constellation Energy Corporation  
1310 Point Street  
Baltimore, Maryland 21231  
Attention: General Counsel  
Email: [david.dardis@constellation.com](mailto:david.dardis@constellation.com)

**8.9 Incorporation by Reference.** The following sections of the Separation Agreement are hereby incorporated in this Agreement by reference to the extent not inconsistent with any of the provisions set forth in this Agreement: Section 8.7 (Confidentiality); Section 8.8 (Privileged Matters); Section 12.3 (Amendments and Waivers); Section 12.4 (Entire Agreement); Section 12.5 (Survival of Agreements); Section 12.9 (Counterparts; Electronic Delivery); Section 12.10 (Severability); Section 12.11 (Assignability; Binding Effect); Section 12.12 (Governing Law); Section 12.13 (Construction); Section 12.14 (Performance); Section 12.15 (Title and Headings); and Section 12.16 (Schedules and Exhibits).

**8.10 Effect if Distribution Does Not Occur.** Notwithstanding anything in this Agreement to the contrary, if the Separation Agreement is terminated prior to the Distribution, this Agreement shall be of no further force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their authorized representatives on the date first above written.

**EXELON CORPORATION**

By: /s/ Christopher Crane  
Name: Christopher Crane  
Title: President and Chief Executive Officer

**CONSTELLATION ENERGY CORPORATION**

By: /s/ Joseph Dominguez  
Name: Joseph Dominguez  
Title: President and Chief Executive Officer

**Schedules to Employee Matters Agreement**

**Schedule A:** Certain Employees Deemed to be Exelon Employees

**Schedule B:** Payroll Procedures for Deferred Compensation and Severance Benefits Payable to Former Shared Services Employees in 2022

**Schedule C:** Allocation of Losses Relating to Certain Existing Benefit Plan Claims



Contact: Emily Duncan  
Investor Relations  
[investorrelations@constellation.com](mailto:investorrelations@constellation.com)

FOR IMMEDIATE RELEASE

Paul Adams  
Corporate Communications  
410-470-4167  
[paul.adams@constellation.com](mailto:paul.adams@constellation.com)

## CONSTELLATION LAUNCHES AS LARGEST U.S. CLEAN ENERGY COMPANY AFTER COMPLETING SEPARATION FROM EXELON

*Company aims to accelerate the transition to a carbon-free future amid growing demand for climate solutions*

**BALTIMORE (Feb. 2, 2022)** – Constellation (Nasdaq: CEG) today announced the completion of its separation from Exelon Corp. (Nasdaq: EXC) and its launch as a standalone, publicly traded company and the nation’s largest carbon-free energy producer and leading supplier of clean energy solutions to millions of homes and businesses. Constellation will begin “regular way” trading on the Nasdaq Global Select Market today under the symbol “CEG.” Headquartered in Baltimore, Constellation will be a Fortune 200 company and operates in 48 states, Canada and the U.K., employing approximately 13,000 people.

“The future health and prosperity of our nation is inextricably linked to our success in eliminating carbon pollution, and our entire focus will be on helping our customers and communities achieve that goal,” said Joseph Dominguez, CEO of Constellation. “Our clean generation fleet and leading customer-facing platform are the foundation on which we will sustain and grow our business. Today begins an exciting transition for our company and employees as we affirm our mission to accelerate the transition to a carbon-free future and advance economic progress and equity in the communities we serve.”

---

Constellation is the nation's largest producer of carbon-free energy and leading supplier of sustainable solutions to millions of residential, public sector and business customers, including three fourths of Fortune 100 companies. Its generation fleet powers more than 20 million homes and businesses and is helping to accelerate the nation's transition to clean energy with more than 32,400 megawatts of capacity and annual output that is nearly 90 percent carbon-free.

Constellation's strategy to accelerate the nation's response to the climate crisis includes its:

- **Commitment to a carbon-free future.** Constellation's fleet of nuclear, hydro, wind and solar generation facilities provides 10 percent of all clean power on the grid in the U.S. With leading scientists and policymakers in agreement that nuclear is critical to meeting the nation's climate goals, the company's fleet has the potential for second license renewals that will extend the life of nuclear stations to 80 years. Constellation also has set its own climate goals:
    - o We will achieve 95 percent carbon-free electricity by 2030
    - o We will achieve 100 percent carbon-free electricity by 2040
    - o We will achieve a 100 percent reduction of operations-driven emissions by 2040
    - o We will provide 100 percent of our business customers with customized data to help them reduce their own carbon footprints.
  - **World-class operations.** Constellation's nuclear energy fleet has run over 94 percent of the time since 2013, which is 4 percent better than the industry average, and had a 2020 refueling outage duration of 22 days, 11 days below the industry average. The resulting increase in carbon-free electricity is the equivalent of taking more than 1.1 million passenger cars off the road each year, based on Environmental Protection Agency emissions data.
  - **Industry-leading customer business.** Constellation has one of the nation's largest customer-facing platforms in America, serving 2 million residential, public sector and business customers. Constellation is helping customers reach their own climate goals through innovative clean energy solutions, including an upcoming 24/7 carbon-free energy matching product.
  - **Commitment to Environmental, Social, and Governance (ESG) principles.** In addition to our leadership in clean energy, Constellation will remain a strong supporter of its communities through workforce development programs, philanthropy, volunteerism and diversity, equity and inclusion initiatives, while maintaining the highest standards of corporate governance.
-

**Disciplined financial policy.** Constellation is committed to maintaining investment grade credit ratings, continuing a track record of effective cost management with more than \$1.1 billion in cost reductions since 2015 and strong stewardship of capital, with a \$180 million dividend growing at 10 percent annually and 2022 EBITDA guidance of \$2.35 billion to \$2.75 billion.

Constellation also is exploring growth opportunities that build on its core businesses and capitalize on the rapidly expanding demand for carbon-free energy and solutions to reduce emissions. The company can pursue numerous avenues for growth, including potential acquisitions of clean energy assets, creating clean hydrogen using its nuclear fleet, introducing new products and services for business customers or leveraging the generation fleet for repowering, co-location of data centers and other opportunities.

In connection with the separation, Exelon shareholders received one share of Constellation common stock for every three shares of Exelon common stock held at the close of business on January 20, the record date for the distribution. The transaction was tax-free to Exelon and its shareholders for U.S. federal income tax purposes. Exelon shareholders will retain their current shares of Exelon stock. For more information about Constellation's business, visit our new corporate website at [ConstellationEnergy.com](http://ConstellationEnergy.com).

###

#### **About Constellation**

*Constellation is the nation's largest producer of carbon-free energy and the leading competitive retail supplier of power and energy products and services for homes and businesses across the United States. Headquartered in Baltimore, its generation fleet powers more than 20 million homes and businesses and is helping to accelerate the nation's transition to clean energy with more than 32,400 megawatts of capacity and annual output that is 90 percent carbon-free. Constellation has set a goal to eliminate 100 percent of its greenhouse gas emissions by 2040 by leveraging innovative technology and enhancing its diverse mix of hydro, wind and solar resources paired with the nation's largest carbon-free nuclear fleet. Constellation's family of retail businesses serves approximately 2 million residential, public sector and business customers, including three-fourths of the Fortune 100. Visit [ConstellationEnergy.com](http://ConstellationEnergy.com) or follow Constellation on Twitter at [@ConstellationEG](https://twitter.com/ConstellationEG).*

---