*Name of RFP Bidder*

**APPENDIX 3 – STANDARD PART 1 FORM**

**Default SERVICE Program**

**REQUEST FOR PROPOSALS**

**PART 1 DATE: Tuesday, January 4, 2014**

PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

This Standard Part 1 Form is the only form that may be used to submit a Part 1 Proposal if you have not previously submitted a successful Part 1 Proposal in a previous solicitation under PECO’s second Default Service Program (“DSP II”).

Before completing this Part 1 Form, please review the RFP, including the Default Service Program Supply Master Agreement, so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.pecoprocurement.com](http://www.pecorfp.com/).

By submitting a Part 1 Proposal in response to this RFP, you are agreeing to all terms and conditions of this RFP.

***Any information provided by an RFP Bidder in this Part 1 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. PECO representatives will review the information provided to fulfill the requirements of Section 2, Section 3, Section 6, and Section 7, and will participate in the evaluation of the creditworthiness of each RFP Bidder. Information regarding the content or status of any Part 1 Proposal will not be released publically or to any individual RFP Bidder during the evaluation process.***

*Name of RFP Bidder*

**INSTRUCTIONS FOR PROPOSAL**

RFP Bidders submit this Part 1 Form and all documents required herein to respond to the qualification standards for the RFP.

This Part 1 Form must be used to submit a Part 1 Proposal by all RFP Bidders that have not submitted a successful Part 1 Proposal in a previous solicitation under DSP II.

**Please complete all sections.**

1. **Part 1 Proposal Submission**

An RFP Bidder must:

* Submit **two (2) original** completed Part 1 Forms (with original signatures) by mail;
* Submit **one (1) electronic copy** (on a CD via mail or by email to pecoprocurement@nera.com) of the completed Part 1 Form in **Microsoft Word**;
* Submit **one (1) copy** (one hard copy or one electronic copy on a CD via mail or by email to pecoprocurement@nera.com) of documents required to support the Part 1 Form as specified in Section 2, Section 3, and Section 6; and
* Manually insert the name of the RFP Bidder **on every page** of the Part 1 Form.

*The completed Part 1 Proposal MUST be received by the Independent Evaluator no later than 12 PM (noon) EPT[[1]](#footnote-1) on January 14, 2014 (the Part 1 Date) at:*

NERA - Independent Evaluator

PECO Default Service Program RFP

1835 Market Street, Suite 1205

Philadelphia, PA 19103

Inquiries may be directed to the Independent Evaluator by:

* telephone (215) 568-0200
* fax (215) 568-9358
* through the “Ask a Question” page on the RFP Web site at [www.pecoprocurement.com](http://www.pecorfp.com/)

**Photocopies and facsimiles of completed forms will not be accepted under any circumstances.**

*Name of RFP Bidder*

1. **Part 1 Proposal Submission**

Notifications

The Independent Evaluator sends you notifications by email or fax, at your option.

Confirmation

If your Part 1 Proposal is received by mail or email, a confirmation consisting of the first page of your Part 1 Form stamped with the time and the date that it was received will be sent to you. This confirmation of receipt will be sent after an initial review, either with a confirmation that your proposal is complete, or with a deficiency notice (see below). If your Part 1 Proposal is hand-delivered, a confirmation consisting of a photocopy of the first page of your Part 1 Form stamped with the time and the date that it was received will be provided to the deliverer.

Timing of Part 1 Proposal Review

The Part 1 Window opens at 8 AM on January 9, 2014 and closes at 12 PM (noon) on January 14, 2014. The last day of the Part 1 Window is called the Part 1 Date. The Independent Evaluator performs an initial review of all Part 1 Proposals during the Part 1 Window. Part 1 Proposals received prior to the Part 1 Window are processed at the opening of the Part 1 Window. Part 1 Proposals received during the Part 1 Window are processed on the day they are received. Proposals received after the Part 1 Window has closed are late proposals and are not processed.

Incomplete Part 1 Proposals

If your Part 1 Proposal is incomplete or requires clarification, the Independent Evaluator will send a deficiency notice to you. You will have until noon on the Part 1 Date, or until 6 PM on the business day following the business day during which a deficiency notice is sent to you, whichever comes later, to respond. If you do not correct or adequately explain the deficiency within the time allowed, your Part 1 Proposal may be rejected and you may be unable to participate in the RFP. One copy of your Part 1 Form will be returned to you.

Late Part 1 Proposals

No late Part 1 Proposals will be accepted under any circumstances.

Part 1 Notification

Each RFP Bidder that submits a Part 1 Proposal will be notified by fax or email whether it met all qualification standards of this RFP no later than 6 PM on January 16, 2014 (the Part 1 Notification Date).

*Name of RFP Bidder*

RFP Bidders Under Agency Agreements

An RFP Bidder submitting a Proposal under an Agency Agreement is required to provide additional information in Section 6 of this Part 1 Form.

Foreign RFP Bidders and Foreign Entities

An RFP Bidder that has not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia (“Foreign RFP Bidder”), or an RFP Bidder that is relying on the financial standing of an entity (an RFP Guarantor or a Principal) that has not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia (a “Foreign Entity”) is required to provide additional information in Section 7 of this Part 1 Form.

*Name of RFP Bidder*

**PART 1 FORM**

1. **Contact Information and Representations**

**Complete all information in this Section 1 of this Part 1 Form.**

*First Item*: Name and Address of the RFP Bidder

*Legal Name of RFP Bidder*

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*Street Address*

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*City State Zip Code*

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*Second Item*: Officer of the RFP Bidder and Designee

The contact information in this section is the contact information for an individual who is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Default Service Program Supply Master Agreement) and bind the RFP Bidder. **The Officer of the RFP Bidder named below must**:

* make all representations required by the Part 1 Form; and
* make all representations required by the Part 2 Form.

**The contact information for the Officer of the RFP Bidder appears below.**

*Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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*Title*

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*Street Address*

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*City State Zip Code*

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*Telephone No. Fax No. Email Address*

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*Name of RFP Bidder*

The Officer of the RFP Bidder may name a Designee. Either the Officer of the Bidder or the Designee must sign the Default Service Program Supply Master Agreement.

Does the Officer of the RFP Bidder opt to name a Designee?

[ ]  yes [ ]  no

**If yes**, please continue providing the information required by this section.

**If no**, please proceed to the next item.

|  |
| --- |
|       (the Officer of the RFP Bidder named above) hereby names      , whose contact information is immediately below, to serve as the Designee. I certify that this individual is authorized to undertake contracts (including the Default Service SMA) and bind the RFP Bidder.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Officer Date     Printed Name |

**The contact information for the Designee appears below.**

*Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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*Title*

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*Street Address*

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*City State Zip Code*

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*Telephone No. Fax No. Email Address*

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*Name of RFP Bidder*

*Third Item*: Communications with the RFP Bidder

1. Please elect the method by which the Independent Evaluator will provide notifications to the RFP Bidder and by which the RFP Bidder will respond to the Independent Evaluator. Such notifications include all notices assessing the completeness of the Part 1 Proposal or the Part 2 Proposal, as well as the Part 1 Notification and the Part 2 Notification.

[ ]  email **OR** [ ]  fax

If the RFP Bidder elected to receive notifications by fax, please provide a fax number for the Representative of the RFP Bidder.

*Fax No.*

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1. Please elect the method by which the Independent Evaluator will provide documents necessary for participation to the RFP Bidder. Such documents include the Default Service SMA documents, the confidential information required to submit Bids on the Bid Date, as well as any training materials prepared by the Independent Evaluator. These documents are either provided electronically by secure file transfer or these documents are saved to a CD sent by overnight delivery service.

[ ]  secure electronic file transfer **OR** [ ]  overnight delivery service

**Notifications sent by overnight delivery service will be sent to the address provided for the Representative. Any such notification will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that where delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day. Notifications sent by email or secure file transfer will be sent to the email address(es) provided for the Representative and for up to three (3) Nominees as designated in the nomination form.**

*Name of RFP Bidder*

*Fourth Item*: Representative of the RFP Bidder

The Officer of the RFP Bidder must designate an individual to serve as Representative of the RFP Bidder. The Officer of the RFP Bidder may name himself or herself as the Representative.

The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder. The Independent Evaluator always contacts the Representative if the Independent Evaluator requires additional information regarding the RFP Bidder’s Proposal. The Independent Evaluator always sends correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date.

**If the RFP Bidder opted for communications by email and/or secure file transfer, the Representative or the Officer of the RFP Bidder may designate up to three (3) authorized individuals to receive communications from the Independent Evaluator in addition to the Representative. The Representative or the Officer of the RFP Bidder must nominate each such authorized individual anew each solicitation. The Representative or the Officer of the RFP Bidder designates these individuals by completing the Nomination Form attached to the Part 1 Form. This is not a requirement of the Part 1 Proposal as the Representative or the Officer of the RFP Bidder may designate such Nominees at any time.**

Below, the Representative is designated by the Officer of the RFP Bidder.

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|       (the Officer of the RFP Bidder named above) hereby designates      , whose contact information is immediately below, to serve as the Representative of the RFP Bidder. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Officer Date     Printed Name |

**The contact information for the Representative of the RFP Bidder appears below.**

*Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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*Title*

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*Street Address*

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*City State Zip Code*

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*Telephone No. Alternate Telephone No. (if available) Email Address*

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*Name of RFP Bidder*

*Fifth Item*: Representations of the Officer of the RFP Bidder

**These certifications must be signed by the Officer of the RFP Bidder and the signature must be notarized or attested with the corporate seal.**

I certify that:

1. I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the Default Service Program Supply Master Agreement) and bind the RFP Bidder.
2. This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
3. To the best of my knowledge and belief, all information provided in this Part 1 Proposal is true and accurate.
4. If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or the Representative will notify the Independent Evaluator of such changes as soon as practicable.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature and Seal from Notary Public Date

*Name of RFP Bidder*

1. **Financial Requirements**

**Provide all information requested in this Section 2 of this Part 1 Form.**

*First Item*: Name of Entity on Whose Financial Standing the RFP Bidder Is Relying

For purposes of a creditworthiness evaluation, the RFP Bidder must clearly select whether the RFP Bidder is: (a) relying on its own financial standing; or (b) relying on the financial standing of another entity. The other entity on whose financial standing the RFP Bidder is relying must be named below and is either an RFP Guarantor, or a Principal if the RFP Bidder is submitting a Proposal under an Agency Agreement.

**Check one of the two boxes below:**

[ ]  **(a)** the RFP Bidder is relying on its own financial standing

[ ]  **(b)** the RFP Bidder is relying on the financial standing of **[name of the entity]**, which is either (check one): [ ] an RFP Guarantor or: [ ]  a Principal

If the RFP Bidder is relying on the financial standing of another entity, please provide that entity’s legal name and address.

*Legal Name of Entity*

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*Street Address*

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*City State Zip Code*

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The financial and credit information provided in this section must pertain to the entity named above (the RFP Bidder, or an RFP Guarantor, or a Principal). All RFP Bidders submitting a Proposal under an Agency Agreement must select option (b) above. If the RFP Bidder is acting as an agent for multiple Principals, the RFP Bidder must identify the Principal with the lowest credit rating as the entity on whose financial standing the RFP Bidder relies.

*Second Item*: Financial Information

**Please provide the requested information either in hard copy, or electronically on a CD or by email. If providing hard copies of financial statements, one copy is sufficient.**

**If the RFP Bidder is relying on its own financial standing, and if financial information is unavailable for the RFP Bidder, the RFP Bidder must clearly state this fact in Section 8 of this Part 1 Form. If the RFP Bidder is relying on the financial standing of another entity, financial information must be available for that entity.**

*Name of RFP Bidder*

The required financial information is the most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent Securities and Exchange Commission (“SEC”) Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement.

If the SEC Form 10-Q or 10-K is unavailable, the RFP Bidder must submit the entity’s most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or equivalent position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the entity. The requirements for this attestation are more specifically provided in Appendix 5 of the RFP Rules.

Please indicate here the information provided (check only one):

[ ] SEC Form 10-Q or 10-K (most recent); or

[ ]  Other quarterly, monthly, or bi-annual financial information with an attestation of the Chief Financial Officer.

*Third Item*:Credit Ratings

The RFP Bidder must submit all available ratings for the entity from the following rating agencies: Standard & Poor’s Ratings Services (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”), and Fitch Ratings (“Fitch”).

1. Is the entity rated by S&P?

[ ]  yes [ ]  no

**If yes**, please provide:

* The entity’s rating
* The type of rating
1. Is the entity rated by Moody’s?

[ ]  yes [ ]  no

**If yes**, please provide:

* The entity’s rating
* The type of rating
1. Is the entity rated by Fitch?

[ ]  yes [ ]  no

**If yes**, please provide:

* The entity’s rating
* The type of rating

*Name of RFP Bidder*

1. **Letters of Credit and Default Service Supply Master Agreement Documents**

**Complete all information requested in this Section 3 of this Part 1 Form.**

*First Item*: Pre-Bid Letter of Credit

Are you submitting a Draft Pre-Bid Letter of Credit?

[ ]  yes [ ]  no

An RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Pre-Bid Letter of Credit by submitting a Draft Pre-Bid Letter of Credit substantially in the form of the Standard Pre-Bid Letter of Credit indicating clearly any and all modifications to the Standard Pre-Bid Letter of Credit. A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated.

**All approved modifications to the Standard Pre-Bid Letter of Credit are posted to the RFP Web site. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.**

**The Draft Pre-Bid Letter of Credit must be submitted electronically, in Microsoft Word with tracked changes, and may be saved to a CD that is included with this Part 1 Proposal, or it may be emailed to the Independent Evaluator at** **pecoprocurement@nera.com****.**

*Second Item*: Post-Bid Letter of Credit

Are you submitting a Draft Post-Bid Letter of Credit?

[ ]  yes [ ]  no

An RFP Bidder may request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Post-Bid Letter of Credit by submitting a Draft Post-Bid Letter of Credit substantially in the form of the Standard Post-Bid Letter of Credit indicating clearly any and all modifications to the Standard Post-Bid Letter of Credit. A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated.

**The Draft Post-Bid Letter of Credit must be submitted electronically, in Microsoft Word with tracked changes, and may be saved to a CD that is included with this Part 1 Proposal, or it may be emailed to the Independent Evaluator at** **pecoprocurement@nera.com****.**

**All approved modifications to the Standard Post-Bid Letter of Credit are posted to the RFP Web site. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.**

*Name of RFP Bidder*

*Third Item*:Information Needed to Prepare the Default Service Program Supply Master Agreement and Its Exhibits

The Independent Evaluator transmits the Default Service Program Supply Master Agreement to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal. The RFP Bidder, in its Part 1 Proposal, must provide all information needed to prepare the Default Service Program Supply Master Agreement for execution, including all exhibits.

1. Under Section 12.3 of the Default Service Program Supply Master Agreement, the Seller may, in its sole discretion, add the following subsection 12.3(c).

 12.3(c) *In order to avoid doubt regarding a commercially reasonable calculation for the purposes of calculating the Default Settlement Amounts by the Non-Defaulting Party, the quantity of amounts of Energy, Capacity and other services to have been provided under a Transaction for the period following the Early Termination Date (the “Termination Quantity”) shall be deemed those quantity amounts that would have been delivered on an hourly basis had the Transaction been in effect during the previous calendar year, adjusted for such Default Service Load changes as have occurred since the previous calendar year. Nothing in this section shall limit the right of the Buyer when Seller is the Defaulting Party to replace Seller’s Full Requirements Service obligation and the result of any Commission-approved procedure will be deemed to be commercially reasonable for purposes of calculating the Default Settlement Amounts and will be deemed to have been determined by reference to the Termination Quantity.*

 Do you intend for subsection 12.3(c) to be included as part of the Default Service Program Supply Master Agreement?

[ ]  yes [ ]  no

1. The information that you provide below will be used to complete Exhibit H (Form of Notice) to the Default Service Program Supply Master Agreement.
	1. All Notices:

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Street Address*

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 *City State Zip Code*

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 *Telephone No. Fax No.*

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 *DUNS Federal Tax I.D. Number*

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*Name of RFP Bidder*

* 1. Invoices:

*ATTN:*

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Telephone No. Fax No.*

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* 1. Scheduling:

*ATTN:*

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Telephone No. Fax No.*

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* 1. Payments:

*ATTN:*

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Telephone No. Fax No.*

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* 1. Wire Transfer:

 *Bank*

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 *ABA ACCT*

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* 1. Credit and Collections:

*ATTN:*

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Telephone No. Fax No.*

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* 1. Additional Notices of an Event of Default to:

*ATTN:*

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Telephone No. Fax No.*

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*Name of RFP Bidder*

**If any of the information requested to prepare the Default Service Program Supply Master Agreement and its Exhibits is unavailable, please enter N/A in the fields or state below that the information for all fields left blank is unavailable.**

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*Fourth Item*: Ability to Perform

The Officer of the RFP Bidder must sign the following certification.

I certify that the RFP Bidder has no pending legal proceedings or, to its knowledge, threatened legal proceedings against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under the Default Service Program Supply Master Agreement and each Transaction Confirmation.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer Date

*Fifth Item*: Information Needed to Prepare the Guaranty

Is the RFP Bidder relying on the financial standing of an RFP Guarantor?

[ ]  yes [ ]  no

**If no**, please proceed to Section 4, “Regulatory Representations”.

 **If yes**, please provide:

1. The following information regarding the RFP Guarantor:

*Name of RFP Guarantor*

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| --- |
|       |

 *Whether the RFP Guarantor is a Corporation, Partnership, etc.*

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 *Jurisdiction under whose laws the RFP Guarantor is existing and organized.*

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*Name of relevant and binding corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws*

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*Name of RFP Bidder*

1. The following information regarding the RFP Bidder:

 *Whether the RFP Bidder is a Corporation, Partnership, etc.*

|  |
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 *Jurisdiction under whose laws the RFP Bidder is existing and organized*

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1. The name and contact information for the person to whom notices and other communications will be sent under the guaranty:

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

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 *Title*

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 *Company*

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 *Street Address*

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 *City State Zip Code*

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 *Phone Number Fax*

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1. The name and title of the person who will be signing the guaranty:

 *Last Name Given Name(s) Mr/Mrs/Ms/Dr/(other)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|       |  |       |  |       |

 *Title*

|  |
| --- |
|       |

*Name of RFP Bidder*

*Sixth Item*: Optional Modifications to the Guaranty

All optional changes to the Form of Guaranty are provided in an Appendix to this Part 1 Form (on page 28). You must consult this Appendix and indicate in the table below the optional changes that the RFP Bidder is electing to adopt.

|  |  |  |
| --- | --- | --- |
| Optional Change | Paragraph  | RFP Bidder adopts change |
|  |  |  |
| 1 | Preamble | [ ]  yes [ ]  no |
| 2 | Paragraph 1 | [ ]  yes [ ]  no |
| 3 | Paragraph 1 | [ ]  yes [ ]  no |
| 4 | Paragraph 1 | [ ]  yes [ ]  no |
| 5 | Paragraph 1 | [ ]  yes [ ]  no |
| 6 | Paragraph 1 | [ ]  yes [ ]  no |
| **7** | **Paragraph 1** | **[ ]  yes (\*)** [ ]  no**Provide the information below under (\*)** |
| 8 | Paragraph 2 | [ ]  yes [ ]  no  |
| 9 | Paragraph 4 | [ ]  yes [ ]  no |
| 10 | Paragraph 5 | [ ]  yes [ ]  no |
| 11 | Paragraph 10 | [ ]  yes [ ]  no |
| 12 | Paragraph 11 | [ ]  yes [ ]  no |
| 13 | Paragraph 11 | [ ]  yes [ ]  no |
| 14 | Paragraph 12 | [ ]  yes [ ]  no |
| 15 | Paragraph 13 | [ ]  yes [ ]  no |
| 16 | Paragraph 14 | [ ]  yes [ ]  no |
| 17 | Paragraph 14 | [ ]  yes [ ]  no |
| **18** | **Paragraph 17** | **[ ]  yes (\*\*)** [ ]  no**Provide the information below under (\*\*)** |
| 19 | Closing Paragraph and Signature Block | [ ]  yes [ ]  no |
| **20** | **Additional Guarantor** | [ ]   **yes (\*\*\*)** [ ]  no**Provide the information below under (\*\*\*)** |
| **21** |  |  |
| **22** |  |  |

***(\*) PLEASE NOTE that optional change #7 is acceptable if the RFP Bidder has an existing outstanding guaranty with PECO. If the RFP Bidder submits a guaranty with the Part 2 Proposal that incorporates the above modification but the RFP Bidder does not win tranches in this solicitation, the Independent Evaluator will destroy the guaranty submitted with the Part 2 Proposal and the previous guaranty will remain in force. (At the request of the RFP Bidder, the Independent Evaluator will return the guaranty submitted with the Part 2 Proposal rather than destroy the document.)***

***(\*)* Please provide the following additional information if you elect optional change #7:**

 *Date of Existing Guaranty Amount of Existing Guaranty*

|  |  |  |
| --- | --- | --- |
|       |  |       |

*Name of RFP Bidder*

**(\*\*) the Representative of the RFP Bidder or the Officer of the RFP Bidder must make the following representation if you elect optional change #18:**

I certify that the Guarantor, on whose financial standing the RFP Bidder will be relying, is not a trust.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer or Representative Date

**(\*\*\*) Please provide the following additional information if you elect optional changes #20, 21, and 22:**

 *Name of Additional Guarantor Place of Incorporation of Additional Guarantor*

|  |  |  |
| --- | --- | --- |
|       |  |       |

*Name of RFP Bidder*

1. **Regulatory Representations**

*First Item*: FERC Authorization

A copy of the FERC Order granting authorization to make sales at market-based rates within PJM is not required; however, PECO may request a copy of this Order if the RFP Bidder becomes an Eligible Default Supplier.

I certify that the RFP Bidder has FERC authorization to make sales of energy, capacity, and ancillary services at market-based rates within PJM and I expect the RFP Bidder to have such authorization for the period of time that the Default Service SMA is in effect. I acknowledge that although a copy of the FERC Order granting such authorization is not required, PECO may request a copy of this Order if the RFP Bidder becomes an Eligible Default Supplier.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer of the RFP Bidder Date

*Second Item*: PJM Load Serving Entity

By the time service begins, a Default Supplier must be a Load Serving Entity (“LSE”) in PJM and must be a signatory of the Reliability Assurance Agreement (“RAA”).

Is the RFP Bidder an LSE in PJM?

[ ]  yes [ ]  no

**If yes,** please provide a copy of the signature page of the RAA.

**If no,** please make the following certification.

I certify that the RFP Bidder has investigated the requirements to become an LSE in PJM and that there exist no impediments for the RFP Bidder to become an LSE by the start of the supply period and to remain an LSE for the duration of the supply period.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer of the RFP Bidder Date

that is not an LSE

*Name of RFP Bidder*

1. **Additional Representations**

**This certification must be signed by the Officer of the RFP Bidder.**

1. I understand the terms of the Default Service Program Supply Master Agreement. The RFP Bidder accepts all of the terms of the Default Service Program Supply Master Agreement without modifications, and the RFP Bidder will execute Transaction Confirmation(s) for all Bids approved by the Commission.
2. The submission of this Part 1 Proposal constitutes the RFP Bidder’s acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.
3. I certify that the RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this Full Requirements RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of these RFPs.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer Date

An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.

*Name of RFP Bidder*

1. **RFP Bidders Under Agency Agreements**

Is the RFP Bidder submitting a Proposal under an Agency Agreement?

[ ]  yes [ ]  no

**If no,** please proceed to Section 7, “Foreign RFP Bidders and Foreign Entities”.

**If yes,** please continue and fill in all required information in this section.

*First Item*: Certification

**the Officer of the RFP Bidder must make the following representation.**

I certify that I have the authority to bind the Principal(s) under the Agency Agreement provided with this Part 1 Proposal. I acknowledge that with the Part 2 Proposal, I will be required to submit an Officers’ Certificate signed by an officer of each Principal substantially in the form of Appendix 6 to the RFP Rules.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer submitting a Proposal Date

 under an Agency Agreement

*Second Item*: Principals and Agency Agreement

If more than one entity is serving as Principal, please list each entity under “Name of Principal or Principals”.

*Name of Principal or Principals*

|  |
| --- |
|       |

Agency Agreement

A copy of the Agency Agreement is required. Please submit one copy (either in hard copy or electronically on a CD via mail or by email) with this Part 1 Proposal.

Financial Information

**In Section 2, you must select option (b) and name** the Principal with the lowest credit rating as the entity on whose financial standing you are relying. If several Principals have the same lowest credit rating, please identify the Principal that also has the lowest tangible net worth as the entity on whose financial standing the RFP Bidder relies.

*Name of RFP Bidder*

*Third Item*: Draft Officers’ Certificate

The RFP Bidder may, but is not required to, submit a draft Officers’ Certificate for evaluation. If a draft Officers’ Certificate is submitted for evaluation, the Independent Evaluator will inform the RFP Bidder of any changes required.

Is the RFP Bidder submitting a draft Officers’ Certificate?

[ ]  yes [ ]  no

*Name of RFP Bidder*

1. **Foreign RFP Bidders and Foreign Entities**

Is the RFP Bidder a Foreign RFP Bidder?

[ ]  yes [ ]  no

Is the RFP Bidder relying on the financial standing of a Foreign Entity (RFP Guarantor or Principal)?

[ ]  yes [ ]  no

**If no to both questions,** please proceed to Section 8, “Justification of Omissions”.

**If yes to one or both of these questions,** please complete all information required in this section.

*First Item*: Evidence of Creditworthiness

In addition to supplying all required information and documents under Section 2 of this Part 1 Form, a Foreign RFP Bidder or an RFP Bidder relying on the financial standing of a Foreign Entity may provide any additional evidence of creditworthiness for the Foreign RFP Bidder or the Foreign Entity so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder or for a Foreign Entity on whose financial standing the RFP Bidder relies?

[ ]  yes [ ]  no

*Second Item*: Representations

**The Officer of a Foreign RFP Bidder must make the following certification:**

I acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign RFP Bidder to be granted unsecured credit under the terms of the Default Service Program Supply Master Agreement: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Default Service Program Supply Master Agreement is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Default Service Program Supply Master Agreement on behalf of the Foreign RFP Bidder has the authority to execute the Default Service Program Supply Master Agreement and that the governing board of such Foreign RFP Bidder has approved the execution of the Default Service Program Supply Master Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Default Service Program Supply Master Agreement.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer of the Foreign RFP Bidder Date

*Name of RFP Bidder*

**The Officer of an RFP Bidder relying on the financial standing of an RFP Guarantor that is a Foreign Entity must make the following certification:**

I acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Default Service Program Supply Master Agreement: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Default Service Program Supply Master Agreement is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Default Service Program Supply Master Agreement on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Default Service Program Supply Master Agreement and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Default Service Program Supply Master Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Default Service Program Supply Master Agreement.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer of the RFP Bidder relying on the financial Date

standing of an RFP Guarantor that is a Foreign Entity

**The Officer of an RFP Bidder that is submitting a Proposal under an Agency Agreement with a Principal that is a Foreign Entity must make the following certification:**

I acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Bidder and its Principal to be granted unsecured credit under the terms of the Default Service Program Supply Master Agreement: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Default Service Program Supply Master Agreement is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Default Service Program Supply Master Agreement.

 \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Officer of the RFP Bidder submitting a Proposal Date

Under an Agency Agreement and the Principal is a Foreign Entity

*Name of RFP Bidder*

*Third Item*: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Default Service Program Supply Master Agreement. The RFP Bidder may, but is not required to, submit a draft of these documents, in hard copy or electronically on a CD via mail or by email, with its Part 1 Proposal.

Are you submitting a draft of any of these additional documents for evaluation?

[ ]  yes [ ]  no

**If no,** please proceed to Section 8, “Justification of Omissions”.

**If yes,** please check all that apply:

**For Foreign RFP Bidders:**

[ ]  Draft legal opinion of outside counsel qualified to practice in the foreign jurisdiction that the Default Service Program Supply Master Agreement is binding. Exhibit G to the Default Service Program Supply Master Agreement includes a sample of this legal opinion.

[ ]  Draft sworn certificate of the corporate secretary (or similar officer) of the Foreign RFP Bidder that the person executing the Default Service Program Supply Master Agreement is so authorized and that its governing board has approved the execution of the Default Service Program Supply Master Agreement.

[ ]  Draft sworn certificate of the corporate secretary (or similar officer) of the Foreign RFP Bidder that its governing board has authorized the execution of agreements of the same type as the Default Service Program Supply Master Agreement in the past.

**For RFP Bidders relying on the financial standing of an RFP Guarantor that is a Foreign Entity:**

[ ]  Draft legal opinion of outside counsel qualified to practice in the foreign jurisdiction that the guaranty pursuant to the Default Service Program Supply Master Agreement is binding. Exhibit G to the Default Service Program Supply Master Agreement includes a sample of this legal opinion.

[ ]  Draft sworn certificate of the corporate secretary (or similar officer) of the RFP Guarantor that the person executing the guaranty is so authorized and that its governing board has approved the execution of the guaranty pursuant to the Default Service Program Supply Master Agreement.

[ ]  Draft sworn certificate of the corporate secretary (or similar officer) of the RFP Guarantor that its governing board has authorized the execution of a guaranty of the same type as the guaranty pursuant to the Default Service Program Supply Master Agreement in the past.

*Name of RFP Bidder*

**For RFP Bidders submitting a Proposal under an Agency Agreement with a Principal that is a Foreign Entity:**

[ ]  Draft legal opinion of outside counsel qualified to practice in the foreign jurisdiction that the Default Service Program Supply Master Agreement is binding. Exhibit G to the Default Service Program Supply Master Agreement includes a sample of this legal opinion.

[ ]  Draft sworn certificate of the corporate secretary (or similar officer) of the Principal that its governing board has authorized the execution of agreements of the same type as the Default Service Program Supply Master Agreement in the past.

*Name of RFP Bidder*

1. **Justification of Omissions**

If you are unable to provide all documents or information required with this Part 1 Form, please justify fully any omissions in the space provided below.

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| --- |
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*Appendix – List of Optional Changes to the Form of Guaranty*

**(Optional Change #1) Preamble:**

THIS GUARANTY (this “Guaranty”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 201\_, is made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Guarantor”), a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_ [a state of the United States or of the District of Columbia], in favor of PECO Energy Company (the “Guaranteed Party”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Terms not defined herein shall have the meanings given to them in the Default Service Program Supply Master Agreement dated \_\_\_\_\_\_\_ , 201\_\_and the\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­­­­­­­­\_\_\_\_\_\_\_dated\_\_\_\_\_\_ , 20\_\_ [insert name(s) and date(s) of prior Agreement(s). These Agreement(s) may include a Default Service Program Supply Master Agreement from DSP I, and/or a Default Service Program Block Energy Supply Master Agreement from DSP I, and/or a Default Service Program Supply Master Agreement dated December 20, 2012 from DSP II] (as amended, modified or extended from time to time, the “Agreement(s)”), between the Guaranteed Party and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Seller”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement(s) with the Seller. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the Seller to the Guaranteed Party arising out of the Agreement(s). Without limiting the generality of the foregoing, Guarantor further agrees as follows:

**(Optional Change #2) Paragraph 1:**

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed $\_\_\_\_, ~~less~~ excluding the value of other liquid securities posted by the Seller under the Agreement(s)] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

**(Optional Change #3) Paragraph 1:**

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). ~~[~~Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed $\_\_\_\_, less the value of other liquid securities posted by the Seller under the Agreement(s).~~]~~ All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

**(Optional Change #4) Paragraph 1:**

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed $\_\_\_\_, less the value other liquid securities posted by the Seller under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection. For the avoidance of doubt, this Guaranty guarantees only payment obligations of Seller and does not guarantee physical delivery or, to the extent applicable, reporting obligations of Seller.

**(Optional Change #5) Paragraph 1:**

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed [$\_\_\_\_], less the value of other liquid securities posted by the Seller under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

**(Optional Change #6) Paragraph 1:**

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed $\_\_\_\_, less the value of other liquid securities posted by the Seller under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection. Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and Guarantor shall have no obligation to perform under any Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

**(Optional Change #7) Paragraph 1:**

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed $\_\_\_\_, less the value of other liquid securities posted by the Seller under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection. By acceptance of this Guaranty, the Guaranteed Party agrees that this Guaranty replaces, supersedes and renders null and void the Guaranty dated [\_\_\_\_\_\_\_\_\_\_\_\_\_] from the Guarantor to the Guaranteed Party in the maximum aggregate liability of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] USD.

**(Optional Change #8) Paragraph 2:**

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by Guaranteed Party against, and any other notice to (except as explicitly provided herein), any party liable thereon (including the Guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Seller, and any right to require a proceeding first against the Seller.

**(Optional Change #9) Paragraph 4:**

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Seller concerning any provision of the Agreement(s) governing any of the Guaranteed Obligations of the Seller; (b) the rendering of any judgment against the Seller or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the Seller and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Seller or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Seller, its assets or the Guarantor; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Seller~~,~~ or the Guaranteed Party, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; and (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same.

**(Optional Change #10) Paragraph 5:**

5. Until such time as the Guaranteed Obligations have been paid in full, the~~The~~ Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Seller or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor.

**(Optional Change #11) Paragraph 10:**

10. The Guarantor’s liability ~~as guarantor~~ shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the Seller in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.

**(Optional Change #12) Paragraph 11:**

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon ~~the effectiveness of any~~ such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

**(Optional Change #13) Paragraph 11:**

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to ~~the time the~~ such expiration or termination ~~is effective~~, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

**(Optional Change #14) Paragraph 12:**

12. All payment demands, requests, instructions, notices and other communications hereunder shall be made at the addresses by hand delivery, by next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received).

**(Optional Change #15) Paragraph 13:**

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as such enforcement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its Articles of Incorporation and by-laws or any law, regulation or contractual restriction binding on it or its assets.

**(Optional Change #16) Paragraph 14:**

14. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania. The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to such venue ~~or~~, including the defense of inconvenient forum.

**(Optional Change #17) Paragraph 14:**

14. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the ~~Commonwealth of Pennsylvania~~ State of New York. The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum.

**(Optional Change #18) Paragraph 17:**

17. ~~If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.~~

**(Optional Change #19) Closing Paragraph and Signature Block:**

IN WITNESS WHEREOF, the Guarantor and the Guaranteed Party have caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement(s).

Accepted and Agreed to:

[GUARANTOR]

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

PECO ENERGY COMPANY

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

**(Optional Changes #20, #21 & #22): If the RFP Bidder wishes to add an Additional Guarantor to the Standard Form of Guaranty, all three changes below must be made.**

**(Optional Change #20) Preamble:**

THIS GUARANTY (this “Guaranty”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_, is made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Guarantor”), a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_ [a state of the United States or of the District of Columbia] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Additional Guarantor”), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [a state of the United States or of the District of Columbia], in favor of PECO Energy Company (the “Guaranteed Party”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Terms not defined herein shall have the meanings given to them in the Default Service Program Supply Master Agreement dated \_\_\_\_\_\_\_ , 20\_\_(as amended, modified or extended from time to time, the “Agreement(s)”), between the Guaranteed Party and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Seller”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement(s) with the Seller. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the Seller to the Guaranteed Party arising out of the Agreement(s). Without limiting the generality of the foregoing, Guarantor further agrees as follows:

**(Optional Change #21) Additional Paragraph:**

18. Additional Guarantor joins this Guaranty and agrees to be jointly and severally liable with Guarantor for each and all of the obligations and responsibilities of the Guarantor pursuant to this Guaranty. Guarantor agrees and acknowledges that Additional Guarantor has assumed the obligations described in this Paragraph 18 and that such assumption in no way limits or restricts Guarantor’s obligations hereunder or Guaranteed Party’s rights to enforce said obligations.

**(Optional Change #22) Closing Paragraph and Signature Block:**

IN WITNESS WHEREOF, the Guarantor and the Additional Guarantor and the Guaranteed Party have caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement(s).

Accepted and Agreed to:

[GUARANTOR]

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

[ADDITIONAL GUARANTOR]

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

PECO ENERGY COMPANY

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

*Checklist*

**This is a checklist of required documents that must be included in the Part 1 Proposal.**

[ ]  **Two (2) originals** of the completed Part 1 Form (with original signatures and original notarized signatures where required) *[Instructions]*

[ ]  **One (1) copy** (electronically on a CD via mail or by email) of the completed Part 1 Form in Microsoft Word *[Instructions]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): If submitting a Proposal under an Agency Agreement, a copy of the Agency Agreement. *[Section 6]*

For the entity (the RFP Bidder, a Guarantor, or a Principal) on whose financial standing the RFP Bidder relies:

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): most recent SEC Form 10-Q or 10-K (whichever is more recent); if unavailable, the most recent quarterly, monthly or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or equivalent position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the entity. *[Section 2]*

**This is a checklist of optional documents that the RFP Bidder may use to prepare the Part 1 Proposal:**

[ ]  **One (1) copy** (electronically on a CD or via email): Draft Pre-Bid Letter of Credit. *[Section 2]*

[ ]  **One (1) copy** (electronically on a CD or via email): Draft Post-Bid Letter of Credit. *[Section 2]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Documentation showing the name of the rating agency, the type of rating, and the rating of the entity *[Section 2]*

An RFP Bidder submitting a Proposal under an Agency Agreement may also provide the following draft document for evaluation:

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft Officers’ Certificate. *[Section 6]*

An RFP Bidder submitting a Proposal under an Agency Agreement with a Principal that is a Foreign Entity may also provide the following draft documents for evaluation:

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft legal opinion of outside counsel qualified to practice in the foreign jurisdiction that the Default Service Program Supply Master Agreement is binding. *[Section 7]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft sworn certificate of the corporate secretary (or similar officer) of the Principal that its governing board has authorized the execution of agreements of the same type as the Default Service Program Supply Master Agreement in the past. *[Section 7]*

A Foreign RFP Bidder may also provide the following draft documents for evaluation:

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft legal opinion of outside counsel qualified to practice in the foreign jurisdiction that the Default Service Program Supply Master Agreement is binding. *[Section 7]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft sworn certificate of the corporate secretary (or similar officer) of the Foreign RFP Bidder that the person executing the Default Service Program Supply Master Agreement is so authorized and that its governing board has approved the execution of the Default Service Program Supply Master Agreement. *[Section 7]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft sworn certificate of the corporate secretary (or similar officer) of the Foreign RFP Bidder that its governing board has authorized the execution of agreements of the same type as the Default Service Program Supply Master Agreement in the past. *[Section 7]*

An RFP Bidder relying on the financial standing of an RFP Guarantor that is a Foreign Entity may also provide the following draft documents for evaluation:

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft legal opinion of outside counsel qualified to practice in the foreign jurisdiction that the guaranty pursuant to the Default Service Program Supply Master Agreement is binding. *[Section 7]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft sworn certificate of the corporate secretary (or similar officer) of the RFP Guarantor that the person executing the guaranty is so authorized and that its governing board has approved the execution of the guaranty pursuant to the Default Service Program Supply Master Agreement. *[Section 7]*

[ ]  **One (1) copy** (hard copy or electronically on a CD via mail or by email): Draft sworn certificate of the corporate secretary (or similar officer) of the RFP Guarantor that its governing board has authorized the execution of a guaranty of the same type as the guaranty pursuant to the Default Service Program Supply Master Agreement in the past. *[Section 7]*

***End of Part 1 Form***

*Name of RFP Bidder*

**ATTACHMENT TO THE PART 1 FORM**

**NOMINATION FORM**

**Default SERVICE Program**

**REQUEST FOR PROPOSALS**

**An RFP Bidder that has elected to receive notifications by email and/or has elected to receive documents by secure file transfer system in Section 1 of the Part 1 Form** may designate up to three (3) authorized individuals who will receive notifications and/or documents in addition to the Representative of the RFP Bidder. The RFP Bidder may designate other authorized individuals at any time during the solicitation using this Nomination Form and is not required to do so in the Part 1 Proposal.

|  |
| --- |
|       (the Officer of the RFP Bidder or Representative of the RFP Bidder) authorizes the individuals whose contact details are immediately below to receive notifications and documents.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Officer or Representative Date     Printed Name |

Contact Information for Nominee #1

*Last Name GivenName(s) Mr/Mrs/Ms/Dr/(other)*

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| --- | --- | --- | --- | --- |
|       |  |       |  |       |

*Title*

|  |
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|       |

*Telephone No. Alternate Telephone No. (if available) Email Address*

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|       |  |       |  |       |

*Fax No.*

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| --- |
|       |

*Name of RFP Bidder*

Contact Information for Nominee #2

*Last Name GivenName(s) Mr/Mrs/Ms/Dr/(other)*

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|       |  |       |  |       |

*Title*

|  |
| --- |
|       |

*Telephone No. Alternate Telephone No. (if available) Email Address*

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*Fax No.*

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Contact Information for Nominee #3

*Last Name GivenName(s) Mr/Mrs/Ms/Dr/(other)*

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*Title*

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|       |

*Telephone No. Alternate Telephone No. (if available) Email Address*

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*Fax No.*

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Notes (such as period during which the Nominee is authorized or the individual that the Nominee is replacing)

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1. All times are Eastern Prevailing Times (“EPT”). [↑](#footnote-ref-1)