

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is made on _____, 202[___] by and between PECO Energy Company, a Pennsylvania company (“PECO”), and [Bidder], a _____ company (“Bidder”), each a “Party” and collectively the “Parties.”

Background

- A. Bidder has determined to submit an application (the “Application”) in response to PECO’s Request for Proposals (“RFP”) for Solar Alternative Energy Credits (“AECs”), as defined by the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 *et seq.*; and provide certain non-public, confidential information to PECO as part of its Application;
- B. If Bidder is selected as a successful bidder and Bidder enters into a Solar Alternative Energy Credit and Purchase Agreement (the “AECPA”) with PECO, the Parties anticipate the exchange of additional non-public, confidential information with respect to the AECPA;
- C. The Parties desire to formally set forth their understanding and agreement with respect to the treatment to be accorded to the non-public, confidential information and have done so in the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

- 1. For purposes of this Agreement, the term “Confidential Information” is defined to mean any knowledge, data, business plans, records, operational methods, policies and/or other information disclosed by or on behalf of a Party (the “Disclosing Party”), its officers, employees, contractors, agents, consultants, or representatives (including, without limitation, financial advisors, attorneys and accountants) or those of its affiliates (collectively, the “Representatives” of a Party) to the other Party (the “Receiving Party”) or its Representatives, which is not otherwise available to the public or to the Disclosing Party’s competitors. Prior to disclosure, the Disclosing Party or its Representatives shall mark or otherwise identify all Confidential Information as “Confidential” or “Proprietary” or with terms or markings of similar import.
- 2. The term “Confidential Information” does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by a Receiving Party, (ii) was within a Receiving Party’s possession prior to being furnished to the Receiving Party on a non-confidential basis, (iii) becomes available to a Receiving Party on a non-confidential basis from a source other than the other Disclosing Party, or (iv) is developed by or for the Receiving Party independently of Confidential Information.
- 3. The Parties acknowledge that Confidential Information is proprietary to, and a valuable asset of, the Disclosing Party and that any disclosure or unauthorized use thereof in violation of this Agreement may cause irreparable harm and loss to the Disclosing Party.
- 4. The Receiving Party and its Representatives shall retain the Disclosing Party’s Confidential Information in confidence and shall not use, disclose or permit the use or disclosure of the Disclosing Party’s Confidential Information, except to persons directly involved in the Application evaluation process or in the execution and implementation of the AECPA, and then

only to the extent necessary in connection with the RFP or AECPA (as applicable), or as otherwise required by law.

5. Each Receiving Party covenants and agrees that it shall not, either directly or indirectly, publish or disclose any of the Disclosing Party's Confidential Information subject to this Agreement or use such Confidential Information for the benefit of itself, another party or any third parties without the prior written consent of the Disclosing Party, except as expressly permitted by this Agreement.
6. The Receiving Party shall continue to treat the Disclosing Party's Confidential Information as confidential in accordance with the terms of this Agreement until three (3) years after the last of (i) the termination of this Agreement, (ii) the completion of the RFP process, (iii) the termination of the AECPA, and (iv) the last disclosure of Confidential Information received by a Receiving Party (the "Confidentiality Period"). After the conclusion of such Confidentiality Period, the Receiving Party shall be under no further duty to treat or protect the Disclosing Party's Confidential Information as confidential under this Agreement.
7. The Parties acknowledge that breach of the terms, covenants or conditions contained in this Agreement by either of them may cause irreparable damage to the other for which a remedy at law would not be adequate. In the event of such breach or threatened breach, the non-breaching Party shall be entitled to seek appropriate injunctive relief in any court of competent jurisdiction, restraining the breaching Party from any such threatened or actual violation of the provision of this Agreement. This provision does not limit a non-breaching Party's right to seek monetary damages in addition to the injunctive relief mentioned above. EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUE OR LOST PROFITS, IN CONNECTION WITH THIS CONFIDENTIALITY AGREEMENT.
8. In the event that a Receiving Party is required to disclose any of a Disclosing Party's Confidential Information by court order or regulation, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement (unless forbidden to do so by court order or regulation) in order to provide the Disclosing Party with an opportunity to seek a protective order or other appropriate remedy. The Parties agree to cooperate with each other in any Party's efforts to prevent disclosure of its Confidential Information. Notwithstanding any provision of this Agreement, PECO shall be free to provide any information received from Bidder to the Pennsylvania Public Utility Commission (the "Commission") or its representatives and to any third party monitor participating in the RFP.
9. Nothing in this Agreement shall authorize or empower the Receiving Party to assume or create any obligation or responsibility whatsoever, expressed or implied, on behalf of or in the name of the Disclosing Party, or to bind the Disclosing Party in any manner, or to make any representation, warranty or commitment on behalf of the Disclosing Party.
10. This Agreement shall terminate without further action by either Party (i) in the event that Bidder is not selected as a successful bidder in the RFP, or (ii) Bidder is disqualified by PECO as provided in the RFP, or (iii) Bidder withdraws its Application, or (iv) if Bidder is selected as a successful bidder, upon Bidder's failure to execute the AECPA after written request by PECO or upon termination of the AECPA. Notwithstanding any such termination, all rights and

obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.

11. The laws, but not the rules relating to the choice of law, of the Commonwealth of Pennsylvania, shall govern this Agreement. Any action or dispute may only be brought in the Court of Common Pleas in Philadelphia, Pennsylvania, or in the United States District Court for the Eastern District of Pennsylvania.
12. This Agreement and all of its terms and provisions shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns as may be permitted by law.
13. The invalidity or non-enforceability of any term or provision contained in this Agreement shall not void or impair the Agreement's remaining provisions, which shall remain in full force and effect as if no such invalid or unenforceable provision existed.
14. Confidential Information is provided on an "As-Is" basis, with no warranty of any nature whether oral or written, statutory, express or implied.
15. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to the Receiving Party or in any intellectual property rights related thereto. Except as provided in the RFP and AECPA, this Agreement is the complete and exclusive agreement regarding the Parties' disclosures of information.
16. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above.

PECO ENERGY COMPANY

[Bidder]

By: _____

By: _____

Title: _____

Title: _____