

## RENEWABLE ENERGY CREDIT AGREEMENT

**Contract Number:** \_\_\_\_\_

THIS RENEWABLE ENERGY CREDIT AGREEMENT (the “REC Contract”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between \_\_\_\_\_ (“Seller” or “Party A”) and the Illinois Power Agency (“IPA” or “Buyer” or “Party B”). Each of Seller and Buyer is sometimes referred to herein as a “Party” or collectively as the “Parties. The term “IPA” as used in this REC Contract includes the IPA’s designee(s), including the ABP Program Administrator and the SFA Program Administrator; however, the term “Buyer” shall only mean the Illinois Power Agency.”

### RECITALS

**WHEREAS**, the IPA has established the Illinois Solar for All Program (“SFA”) for the purchase of Renewable Energy Credits (“RECs” which, for purposes of this REC Contract shall also mean the “Renewable Energy Certificates” or “RECs” as utilized in the Master REC Agreement (as hereinafter defined)) by Buyer for which Transaction(s) under this REC Contract have been awarded pursuant to the SFA and have been approved by the Illinois Commerce Commission (“ICC”);

**WHEREAS**, pursuant to the SFA, Buyer and Seller agreed to enter into this REC Contract to set forth the terms and conditions of the Transaction(s) entered into by the Parties; and

**WHEREAS**, each of Buyer and Seller believes it is in its best interest to enter into this REC Contract including all Product Order(s) hereunder;

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the mutual agreements contained in this REC Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Illinois State Requirements, Master REC Agreement and Product Orders.**

(a) Except as otherwise expressly set forth in this REC Contract (and as otherwise amended, supplemented and modified herein), this REC Contract shall be subject to and governed by all the terms and conditions from the form of the agreement entitled “Master Renewable Energy Certificate Purchase and Sale Agreement” attached hereto as Exhibit J (hereinafter the “Master REC Agreement”) and such terms, as modified hereby, are incorporated herein by reference. For purposes of the definitions contained in the Master REC Agreement, this REC Contract shall constitute the “Cover Sheet,” and the date the ICC approves a Transaction shall constitute the “Trade Date” indicated in the Product Order for such Transaction. Capitalized terms used and not otherwise defined herein shall have the same meaning as in the Master REC Agreement. Further, the Illinois State Requirements attached hereto as Exhibit K.1 – Exhibit K.5 will constitute a part of the Agreement between the Parties hereto. In case of a conflict between the provisions of the Illinois State Requirements and this REC Contract, any requirements pursuant to Illinois law shall control, followed by the terms and conditions provided in the Cover Sheet, followed by the terms and conditions provided in the Master REC Agreement, then by any remaining Illinois State Requirements.

(b) If the Parties have entered into a Master REC Agreement that governs transactions other than the Transaction(s) set forth in this REC Contract, such Master REC Agreement shall not apply for the purposes of the Transaction(s) confirmed under this REC Contract, and this REC Contract shall be treated as separate and stand-alone from all other transactions between the Parties. This REC Contract shall apply solely for purposes of the Transaction(s) specified herein and shall not apply for the purposes of any other transactions between the Parties.

(c) This REC Contract may include multiple Transactions. The terms of a Transaction are as

specified in this REC Contract and in a Product Order. For each Transaction, Buyer and Seller shall execute a Product Order substantially in the form of Exhibit A to this REC Contract within seven (7) Business Days of Seller's receipt of the Product Order from Buyer to confirm the terms of the Transaction. Schedule A to a Product Order shall include summary information of each Designated System proposed by Seller under the SFA and approved by the ICC for inclusion in this REC Contract. Once a Designated System is Energized, the IPA shall prepare and complete Schedule B to the Product Order for such Designated System, which includes updated summary information related to the Designated System, and which shall be the basis for determining applicable payments under this REC Contract.

2. **Term.** Unless earlier terminated pursuant to the terms of this REC Contract, the "Term" of this REC Contract shall be from the Effective Date until December 31 following the conclusion of the last annual review process pursuant to Section 6(d) of this REC Contract. In the event that a Suspension Period applicable to all Transactions under this REC Contract has occurred and is continuing for more than seven hundred thirty (730) consecutive days, then either Party may terminate this REC Contract, and if payments have been made to Seller, then with respect to each Designated System, Seller shall return the amount of payment based on the applicable Contract Price and on the difference between the number of RECs used to calculate payment and the number of RECs Delivered from such Designated System. This calculation shall be consistent with the calculation described in Section 5.1(b) of the Master REC Agreement.

3. **Product.** The Product is RECs generated from a Designated System, for which summary information is specified in a Product Order. Seller may not substitute RECs generated from a generator other than a Designated System.

4. **Facility Information.** The Product is Unit Specific. RECs Delivered must be from one of the Designated Systems and Seller represents as of the date of each Delivery hereunder by a Designated System that is Delivering REC(s) that:

- (a) Each such Designated System is not and will not be a generating unit whose costs are being recovered through rates regulated by Illinois or any other state or states.
- (b) Each such Designated System is a new generating unit such that the Date of Final Interconnection Approval did not occur before June 1, 2017.
- (c) Each such Designated System meets the definition of the Class of Resource indicated in the applicable Product Order and meets the requirements specified in the IPA Act or rules promulgated by the ICC for the designated Class of Resource.

If a Designated System is determined not to be in compliance with any of the provisions of Sections 4(a) through (c) (inclusive), then upon the occurrence of such determination, the IPA shall provide written notice of such non-compliance to Buyer and Seller and the Designated System and the RECs associated with such Designated System shall be deemed removed from this REC Contract twenty (20) Business Days after such written notice by the IPA to Buyer and Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer and the IPA in their reasonable discretion, that such event has not occurred. As soon as practicable after the conclusion of such twenty (20) Business Day period, if the non-compliance of the Designated System has not been determined to be cured, the IPA shall provide to Buyer and Seller a revised Schedule A (and Schedule B, if applicable) and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract.

In addition, for non-compliance with Sections 4(a), Buyer shall be entitled to payment by Seller in the amount of the greater of: (i) the Collateral Requirement with respect to such Designated System or (ii) one hundred ten percent (110%) of the total payments Seller has received from Buyer associated with RECs from such Designated System; and for non-compliance with any of the provisions of Sections 4(b) through (c) (inclusive), Buyer shall be entitled to payment by Seller in the amount of the greater of: (i) the Collateral Requirement with respect to such Designated System or (ii) one hundred percent (100%) of the total

payments Seller has received from Buyer associated with RECs from such Designated System.

The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with one or more of Sections 4(a) through (c) (inclusive), (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty and (D) the remedies specified in this Section 4 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with one or more of Sections 4(a) through (c).

5. **Energization of Designated Systems**

(a) A Designated System must be Energized by the Scheduled Energized Date indicated on Schedule A to the Product Order that is applicable to such Designated System. The Scheduled Energized Date shall be the date that is twelve (12) months from the Trade Date of such Product Order if the Designated System is a Distributed Renewable Energy Generation Device, or eighteen (18) months from the Trade Date of such Product Order if the Designated System is a Community Renewable Energy Generation Project.

(b) Provided that an extension request is made in writing by Seller to Buyer and the IPA prior to the Scheduled Energized Date for a Designated System, the Scheduled Energized Date of such Designated System may be extended one or more times as follows:

- (i) a one hundred eighty (180) day extension shall be granted upon payment of a refundable \$25/kW extension fee from Seller to Buyer based on the Proposed Nameplate Capacity of such Designated System, which payment shall be borne by the Seller and shall not be passed through to End Use Customers or the Anchor Tenant, and which shall be refunded by Buyer to Seller concurrent with the first REC payment from Buyer to Seller;
- (ii) if such Designated System is a Community Renewable Energy Generation Project, a second one hundred eighty (180) day extension subsequent to an extension granted pursuant to subsection (i) above shall be granted upon payment of an additional refundable \$25/kW extension fee from Seller to Buyer based on the Proposed Nameplate Capacity of such Designated System, which payment shall be borne by the Seller and shall not be passed through to End Use Customers or the Anchor Tenant, and which shall be refunded by Buyer to Seller concurrent with the first REC payment from Buyer to Seller, provided that (1) the purpose of such extension is to acquire subscribers and (2) the Date of Final Interconnection Approval has occurred at time of the extension request;
- (iii) an extension of up to one hundred eighty (180) days may be granted if Seller demonstrates, to the satisfaction of Buyer in its reasonable discretion, that such extension is necessary due to documented delays associated with the processing of permit requests or addressing regulatory requirements, provided such delays are not primarily caused by Seller's actions;
- (iv) an extension shall be granted if the Designated System is electrically complete (ready to start generation), but the utility to which the Designated System is to be interconnected has not approved the interconnection; provided that Seller demonstrates, to the satisfaction of Buyer in its reasonable discretion, that the interconnection approval request was made to the applicable interconnecting utility within thirty (30) days of such Designated System being electrically complete; and provided further that such extension shall expire thirty (30) days after the Designated System receives its interconnection; and if such extension is granted and the utility to which the Designated System is to be interconnected has not approved the interconnection for a period of seven hundred thirty (730) days from the date such

extension is granted, then Seller has the right to remove the Designated System and the RECs associated with such Designated System from the REC Contract and receive a refund of the portion of its Performance Assurance in the amount of the Collateral Requirement associated with such Designated System by providing written notice to Buyer and the IPA. As soon as practicable after the receipt of such written notice, the IPA shall provide to Buyer and Seller a revised Schedule A (and Schedule B, if applicable) and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract; and

- (v) other extensions may be granted on a case by case basis upon a demonstration of good cause by Seller to the satisfaction of the IPA at its reasonable discretion, if the approval of such extension is communicated in writing by the IPA to Buyer and Seller. For the avoidance of doubt, good cause would include Energization delays resulting from delays in receiving the interconnecting utility's estimate of costs to construct the interconnection facilities, and complete required distribution upgrades, necessary for the interconnection of a Designated System.

For avoidance of doubt, the extensions set forth in each of subsections (iii), (iv) and (v) of this Section 5(b) of the REC Contract are independent of any other extensions that may be granted pursuant to this Section 5(b), and shall commence on the date such extension is granted, which may run concurrent with the extensions set forth in subsection (i) or (ii) of this Section 5(b) of the REC Contract.

(c) If an extension is granted to the Scheduled Energized Date for a Designated System, the revised Scheduled Energized Date shall be specified in an amended Schedule A to the Product Order applicable to such Designated System and provided by the IPA to Buyer and Seller.

(d) In the event that Seller fails to Energize a Designated System by the Scheduled Energized Date (plus any extension) for a Designated System, then the Designated System and the RECs associated with such Designated System shall be deemed removed from this REC Contract. As soon as practicable after the occurrence of such failure by Seller, the IPA shall provide to Buyer and Seller a revised Schedule A and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract. Upon the occurrence of such failure, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement associated with such Designated System as indicated on Schedule A to the Product Order that is applicable to such Designated System and any extension fees associated with such Designated System that have been paid by Seller to Buyer.

(e) If the Actual Nameplate Capacity of a Designated System upon Energization is different from the Proposed Nameplate Capacity of such Designated System and such Actual Nameplate Capacity is within the greater of: +/-5kW or +/-25% of such Proposed Nameplate Capacity, then the following shall apply:

- (i) if the Designated System is a Distributed Renewable Energy Generation Device and the Actual Nameplate Capacity is greater than the Proposed Nameplate Capacity then:
  - (A) the Contract Price for purposes of payment shall be the REC price applicable to the Actual Nameplate Capacity under the SFA at the time of Energization of such Designated System, and if such REC price is not available then the last prevailing REC price applicable to the Actual Nameplate Capacity under the SFA. For avoidance of doubt, the foregoing is not applicable if the size category of the Actual Nameplate Capacity relevant to determining REC prices under the SFA is the same as the size category of the Proposed Nameplate Capacity, in which case the Contract Price for purposes of payment shall remain unchanged from the Proposed Price indicated in Schedule A to the Product Order applicable to such Designated System; and
  - (B) the quantity of RECs used for purposes of payment shall be the lesser of the

REC quantities calculated based on: (1) the Proposed Nameplate Capacity and Capacity Factor and (2) the Actual Nameplate Capacity and Capacity Factor.

- (ii) if the Designated System is a Distributed Renewable Energy Generation Device and the Actual Nameplate Capacity is less than the Proposed Nameplate Capacity, then:
  - (A) the Contract Price for purposes of payment shall remain unchanged from the Proposed Price indicated in Schedule A to the Product Order applicable to such Designated System. For avoidance of doubt, the Contract Price for purposes of payment shall not include any additional adders that may be applicable to smaller sized generating units under the SFA; and
  - (B) the quantity of RECs used for purposes of payment shall be the lesser of the REC quantities calculated based on: (1) the Proposed Nameplate Capacity and Capacity Factor and (2) the Actual Nameplate Capacity and Capacity Factor.
  
- (iii) if the Designated System is a Community Renewable Energy Generation Project and the Actual Nameplate Capacity is greater than the Proposed Nameplate Capacity and such change in Nameplate Capacity results in a change from a smaller size category to a larger size category applicable to the determination of REC prices under the SFA, the following shall apply:
  - (A) the Anchor Tenant Contract Price for purposes of calculating the Contract Price shall be the REC price applicable to the Actual Nameplate Capacity under the ABP (or SFA if such Anchor Tenant is an eligible non-profit or public-sector facility under the SFA Low Income Community Solar Initiative for purposes of receiving the SFA price) at the time of Energization of such Designated System and if such REC price is not available then the last prevailing REC price applicable to the Actual Nameplate Capacity under the ABP (or SFA if such Anchor Tenant is an eligible non-profit or public-sector facility under the SFA Low Income Community Solar Initiative for purposes of receiving the SFA price);
  - (B) the Non-Anchor Tenant Contract Price for purposes of calculating the Contract Price shall include a REC price applicable to the Actual Nameplate Capacity under the SFA at the time of Energization of such Designated System, and if such REC price is not available then the last prevailing REC price applicable to the Actual Nameplate Capacity under the SFA; the Non-Anchor Tenant Contract Price for purposes of calculating the Contract Price for the first REC payment shall be further adjusted to include any adders that may be applicable to the Community Solar Subscription Mix at the time of Energization of such Designated System; and
  - (C) the quantity of RECs used for purposes of the payment shall be the multiplicative product of (1) the lesser of the Proposed Nameplate Capacity or the Actual Nameplate Capacity, (2) Capacity Factor, (3) 8,760 hours, (4) 15 years and (5) the combined percent of the Actual Nameplate Capacity that is being subscribed by the Anchor Tenant and End Use Customers at the time of Energization.
  
- (iv) if the Designated System is a Community Renewable Energy Generation Project and the Actual Nameplate Capacity is less than the Proposed Nameplate Capacity, the following shall apply:
  - (A) the Anchor Tenant Contract Price for purposes of calculating the Contract Price shall remain unchanged from the Anchor Tenant Proposed Price indicated in Schedule A to the Product Order applicable to such Designated System;

- (B) the Non-Anchor Tenant Contract Price for purposes of calculating the Contract Price shall include a REC price that remains unchanged from the Non-Anchor Tenant Proposed Price indicated in Schedule A to the Product Order applicable to such Designated System; the Non-Anchor Tenant Contract Price for purposes of calculating the Contract Price for the first REC payment shall be further adjusted to include any adders that may be applicable to the Community Solar Subscription Mix at the time of Energization of such Designated System; and
- (C) the quantity of RECs used for purposes of the payment shall be the multiplicative product of (1) the lesser of the Proposed Nameplate Capacity or the Actual Nameplate Capacity, (2) Capacity Factor, (3) 8,760 hours, (4) 15 years and (5) the combined percent of the Actual Nameplate Capacity that is being subscribed by the Anchor Tenant and End Use Customers at the time of Energization.

(f) If the Designated System is a Community Renewable Energy Generation Project, the following shall also apply:

- (i) subsequent to Energization, the quantity of RECs as well as the Contract Price used for purposes of the REC payment shall be subject to one (1) additional payment adjustment based on the information in the Community Solar First Year Report submitted by Seller to the IPA pursuant to Section 10(b) of the Cover Sheet for the four (4) full Quarterly Periods after Energization. For purposes of this payment adjustment, (a) the quantity of RECs shall be based on the percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and the End Use Customers, as applicable, on the last day of the last Quarterly Period reported in the Community Solar First Year Report submitted by Seller to the IPA; (b) the Non-Anchor Tenant Contract Price for purposes of calculating the Contract Price shall be adjusted to include any adders based on the Community Solar Subscription Mix on the last day of the last Quarterly Period reported in the Community Solar First Year Report submitted by Seller to the IPA; and (c) the Anchor Tenant Contract Price for purposes of calculating the Contract Price shall remain unchanged;
- (ii) notwithstanding the foregoing Section 5(f)(i) above, with respect of the period between Energization and the end of the period covered by the Community Solar First Year Report, if the percent of the Actual Nameplate Capacity subscribed by the Anchor Tenant has decreased and the percent of the Actual Nameplate Capacity subscribed by End Use Customers has increased, then for purposes of payment, any increase in the percent of the Actual Nameplate Capacity subscribed by the End Use Customers that are replacing the share previously subscribed by the Anchor Tenant shall be subject to the Anchor Tenant Contract Price, and the Non-Anchor Tenant Contract Price shall be applicable to any remaining percent increase in excess of the increased share of the Actual Nameplate Capacity subscribed by the End Use Customers replacing the share previously subscribed by the Anchor Tenant, and the Contract Price shall be the weighted price obtained by dividing (1) the sum of (a) the multiplicative product of (j) the Anchor Tenant Contract Price and (k) the share of the Actual Nameplate Capacity subscribed by the Anchor Tenant and by any End Use Customers whose share is subject to the Anchor Tenant Contract Price and (b) the multiplicative product of (x) the Non-Anchor Tenant Contract Price and (y) the share of the Actual Nameplate Capacity subscribed by End Use Customers whose share is subject to the Non-Anchor Tenant Contract Price; by (2) the combined share of the Actual Nameplate Capacity subscribed by the Anchor Tenant and End Use

Customers, which result shall be rounded to the nearest penny.<sup>1</sup> For purposes of contract administration, the foregoing adjustment in the case of a decreasing Anchor Tenant subscription relates to how the Contract Price and the quantity of RECs for purposes of payment are calculated only and is not intended to change the Anchor Tenant Contract Price and the Non-Anchor Tenant Contract Price. For avoidance of doubt, the Anchor Tenant Contract Price and the Non-Anchor Tenant Contract Price shall remain unchanged from the date of Energization unless the Non-Anchor Tenant Contract Price is changed due to changes in the Community Solar Subscription Mix related to the percent of the Actual Nameplate Capacity subscribed by Small Subscribers;

- (iii) notwithstanding the foregoing Section 5(f)(i) above, if the percent of Non-Anchor Nameplate Capacity that has been subscribed by End Use Customers is less than fifty percent (50%) on the last day of the last Quarterly Period reported in the Community Solar First Year Report submitted by Seller to the IPA, then Seller shall be afforded one (1) Quarterly Period to cure such deficiency, which period may be extended for good cause upon request by Seller to the IPA, and the payment adjustment shall be delayed until after the conclusion of such cure period. For purposes of the deficiency cure process, Seller shall submit updated information for an additional Quarterly Period (or extended cure period approved by the IPA), in an addendum to the Community Solar First Year Report by tenth (10<sup>th</sup>) day of the month immediately succeeding such additional Quarterly Period or extended cure period, as applicable. If Seller fails to submit such an addendum to the Community Solar First Year Report or if the percent of Non-Anchor Nameplate Capacity that has been subscribed by End Use Customers remains less than fifty percent (50%) on the last day of the additional Quarterly Period or extended cure period reported in the Community Solar First Year Report addendum submitted by Seller, then the Designated System and the RECs associated with such Designated System shall be deemed removed from this Agreement. As soon as practicable after such occurrence, the IPA shall provide to Buyer and Seller a revised Schedule A (and Schedule B, if applicable) and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract, and if payments have been made to Seller with respect to the Designated System, Seller shall make a payment adjustment to Buyer based on the Contract Price recorded at Energization and on the difference between the number of RECs used to calculate payment and the number of RECs Delivered from such Designated System. This calculation shall be consistent with the calculation described in Section 5.1(b) of the Master REC Agreement, and Buyer may draw on Seller's Performance Assurance for this purpose. If the percent of Non-Anchor Nameplate Capacity that has been subscribed by End Use Customers is at least fifty percent (50%) on the last day of the additional Quarterly Period (or extended cure period approved by the IPA) reported in the Community Solar First Year Report addendum submitted by Seller, then for purposes of the administration

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<sup>1</sup> For example, if between Energization and the end of the period covered by the Community Solar First Year Report, the percent of the Actual Nameplate Capacity subscribed by the Anchor Tenant decreased by 3 percentage points while the percent subscribed by End Use Customers increased by 5 percentage points, then RECs associated with an increase of 3 percentage points of End Use Customer subscription share shall be subject to the Anchor Tenant Contract Price and RECs associated with the remaining increase of 2 percentage points will be subject to the Non-Anchor Tenant Contract Price. For purposes of the payment adjustment, the total quantity of RECs subject to the adjustment will be based on the Contract Nameplate Capacity calculated on the last day of the period covered by the Community Solar First Year Report multiplied by the result obtained by dividing the number of months remaining in the Delivery Term from (and inclusive of) the month immediately subsequent to the period covered by the Community Solar First Year Report by 180 months.

of this Agreement and for purposes of the payment adjustment (including any adjustments to the Non-Anchor Tenant Contract Price), the updated information applicable on the last day of the additional Quarterly Period reported in the Community Solar First Year Report addendum shall be deemed to have prevailed on the last day of the Quarterly Period reported in the initial Community Solar First Year Report submitted by Seller;

- (iv) the Standing Order for such Designated System shall be amended by Buyer and Seller as soon as practicable after the receipt of instructions to amend the Standing Order provided by the IPA based on information contained in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet to reflect the percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and the End Use Customers based on information in such Community Solar First Year Report, and any RECs that are not eligible for Delivery under the Standing Order shall be the exclusive property of Seller, to be utilized in Seller's sole discretion. Such amendment to the Standing Order shall be performed on a prospective basis and not retroactive basis regardless of the calculation performed in Sections 5(f)(i)-(iii) above;
- (v) at any time following the applicable Trade Date and before the end of the Delivery Term, Seller may request for a change of the Anchor Tenant by written request and submission of acceptable documentation to the IPA, which shall be approved at the IPA's reasonable discretion. If the Anchor Tenant is changed from an entity that is not a non-profit or public-sector facility to an entity that is a non-profit or public-sector facility, then there shall be no change to the Anchor Tenant Contract Price. If the Anchor Tenant is changed from an entity that is a non-profit or public-sector facility to an entity that is not a non-profit or public-sector facility, then the Anchor Tenant Contract Price shall be reduced to the prevailing or last recorded REC price applicable to such Designated System under the ABP; and if payment for such Designated System has occurred, then Seller shall make a payment adjustment to Buyer within thirty (30) days of notice from Buyer and the amount of such payment adjustment shall equal the multiplicative product of (A) the difference between the then effective Anchor Tenant Contract Price and the prevailing or last recorded REC price applicable to such Designated System under the ABP, (B) the lesser of the Proposed Nameplate Capacity or the Actual Nameplate Capacity, (C) Capacity Factor, (D) 8,760 hours, (E) 15 years, (F) percent of the Actual Nameplate Capacity that was subscribed by the Anchor Tenant being replaced and (G) the result obtained by dividing the number of days remaining in the Delivery Term from (and inclusive of) the date that the change of the Anchor Tenant becomes effective by the number of days in the Delivery Term. For purposes of the administration of Section 6(e) of Cover Sheet, the base percentage subscribed by Anchor Tenant as a share of Actual Nameplate Capacity is assumed to be unchanged from the date of Energization, as may be updated once based on the Community Solar First Year Report, and the actual percentage subscribed by the new Anchor Tenant shall be used as the metric of performance that is measured against the base percentage in annual Delivery Year evaluations under Section 6(e) of the Cover Sheet going forward.
- (vi) if a Designated System has been proposed in its SFA application to be a 100% Low-Income Subscriber Owned Project, and Seller provides documentation acceptable to the IPA demonstrating that the project is a 100% Low-Income Subscriber Owned Project within six years of Energization, then Seller shall be entitled to an additional payment equal to the multiplicative product of (A) \$5 per REC, (B) Designated System Contract Maximum REC Quantity and (C) the result obtained by dividing the number of days remaining in the Delivery Term from (and inclusive of) the date such



Designated System is deemed to be a 100% Low-Income Subscriber Owner Project by the number of days in the Delivery Term. Further, unless Seller's Performance Assurance is sufficient or unless Seller provides additional Seller's Performance Assurance to Buyer three (3) Business Days prior to when such additional payment is scheduled to be paid, Buyer shall make payment to Seller in the amount of \$4.75 per REC and withhold \$0.25 per REC as additional Seller's Performance Assurance. For avoidance of doubt, the Contract Price shall reflect an increase of \$5 per REC. Further, if the Designated System fails to remain a 100% Low-Income Subscriber Owned Project during the Delivery Term (as determined by the IPA, including via certifications by the Seller of this status on each REC Annual Report) and such deficiency is not cured within a period of four (4) consecutive months from notice by the IPA to Seller, which period may be extended for good cause upon request by Seller to the IPA, Seller shall return to Buyer such additional payment made to Seller, calculated on a pro-rata basis from the date such Designated System fails to remain a 100% Low-Income Subscriber Owned Project until the end of the Delivery Term, and such Designated System shall cease to be a 100% Low-Income Subscriber Owned Project thenceforth regardless of any subsequent ownership changes;

- (vii) any adjustments to the Contract Price and/or the quantity of RECs used for purposes of the REC payment calculations as provided in this Section 5, including any payment adjustments pursuant to Section 5(f), shall be reflected in the calculation of the Maximum Allowable Payment that is applicable for payment by Buyer in the following Quarterly Period in accordance with Section 2.2 of the Master REC Agreement<sup>2</sup> and if such payment adjustment is negative, Seller shall make such payment within fifteen (15) Business Days of notice by Buyer;
- (viii) Exhibit H to this REC Contract contains an illustrative example of the payment adjustment to be made following the Community Solar First Year Report as provided in Section 5(f)(i) above;
- (ix) for avoidance of doubt, there is no requirement for Seller to propose an Anchor Tenant in its SFA Application. If no Anchor Tenant is proposed in the SFA Application with respect to the Designated System, then the Anchor Tenant's subscription share of the Designated System shall be deemed zero percent (0%); and
- (x) for avoidance of doubt, shares of the Designated System that are subscribed by any other subscribers besides the Anchor Tenant and End Use Customers (as established at the date of Energization, and potentially adjusted pursuant to Sections 5(f)(i)-(iii) above) are not eligible for payment and there shall be no delivery obligations with respect to RECs associated with those subscriptions.

(g) For a Designated System that would otherwise be Energized pending the establishment of the Standing Order, if the Actual Nameplate Capacity is larger than the Proposed Nameplate Capacity and where the difference between the Actual Nameplate Capacity and the Proposed Nameplate Capacity is within the greater of: +5kW or +25% of the Proposed Nameplate Capacity, then Seller shall have the option to request, by written notice to the IPA, for such Designated System and the RECs associated with such Designated System to be removed from this REC Contract and to be submitted under a new SFA application. If Seller desires to have the Designated System change its Class of Resource, Seller shall also have the option to request, by written notice to the IPA, for such Designated System to be removed from this REC Contract and

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<sup>2</sup> For example, an adjustment based on a Community Solar First Year Report submitted by Seller on September 10, 2020 shall be reflected in the Quarterly Netting Statement issued to Seller on December 1, 2020 and eligible to be included in Seller's invoice due December 10, 2020.

to be submitted under a new SFA application. For all Designated Systems where the difference between the Actual Nameplate Capacity and the Proposed Nameplate Capacity is not within the greater of: +/-5kW or +/-25% of the Proposed Nameplate Capacity, as communicated by the IPA in writing to Buyer and Seller, then such Designated System shall be removed from this REC Contract, and Seller shall have the option for such Designated System to be submitted under a new SFA application. As soon as practicable after the receipt of such Seller's request to remove the Designated System from the REC Contract or upon such determination by the IPA that the difference between the Actual Nameplate Capacity and the Proposed Nameplate Capacity is not within the greater of: +/-5kW or +/-25% of the Proposed Nameplate Capacity, the IPA shall provide to Buyer and Seller a revised Schedule A (and Schedule B if applicable) and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract. In all these cases, a portion of Seller's Performance Assurance equal to the Collateral Requirement associated with such Designated System shall be forfeited unless the new SFA application of such Designated System is approved by the ICC for inclusion in this REC Contract within three hundred sixty five (365) days of the date of the written notice from Seller or the IPA requesting for the removal of such Designated System from this REC Contract, in which case the previously forfeited portion of such Seller's Performance Assurance associated with the original Designated System's Proposed Nameplate Capacity shall be applied to meet the Collateral Requirement of such newly approved Designated System. If previously forfeited Performance Assurance is not entirely required to meet Collateral Requirement of such newly approved Designated System as required by the previous sentence, it will be refunded to Seller. The IPA shall notify the Buyer when either forfeiture or re-application of the applicable portion of Seller's Performance Assurance shall occur.

(h) Upon Energization of a Designated System, the IPA shall prepare and complete Schedule B to the Product Order for such Designated System, which includes summary information related to such Designated System; such Schedule B to the Product Order shall be included with the Quarterly Netting Statement that the IPA sends to Buyer and Seller pursuant to Section 2.2 of the Master REC Agreement after the conclusion of the Quarterly Period in which such Designated System is Energized or after the conclusion of the immediately subsequent Quarterly Period. If the Designated System is a Community Renewable Energy Generation Project, the IPA may update Schedule B to the Product Order for such Designated System based on the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet, or if there is a change of the Anchor Tenant, or if such Designated System has become or failed to remain a 100% Low-Income Subscriber Owned Project.

(i) The IPA is the primary entity responsible for confirming whether each Designated System's characteristics meet the requirements of the SFA for inclusion in this REC Contract, and the Parties acknowledge and agree that the IPA shall have the right to request more information from Seller on a Designated System, obtain subscription information on a Designated System that is a Community Renewable Energy Generation Project from the interconnecting utility, and conduct on-site inspections and audits to verify the quality of the installation and conformance with information submitted to the IPA. Seller shall provide written authorization in the form of Exhibit I to this REC Contract from the owner of each Designated System that is a Community Renewable Energy Generation Project within a Product Order, authorizing the interconnecting utility to disclose subscription information to the IPA (with any personally identifying information to be afforded confidential treatment by the Parties and the IPA). If the IPA determines that a Designated System as built (i) is in material non-conformance with requirements of the SFA; or (ii) is materially non-conforming with the information previously submitted by Seller to the IPA about that Designated System, then the IPA shall provide notice of the material deficiency to Seller. Seller shall then have twenty (20) Business Days to cure the material deficiency, with extensions for good cause issued at the discretion of the IPA. If the IPA determines in its reasonable discretion that the Designated System's material deficiency continues, the IPA shall have the right to remove the Designated System and its associated RECs from this REC Contract, or alternatively to impose other discipline on Seller under the SFA. If the IPA determines that the Designated System and the RECs associated with such Designated System shall be removed from this REC Contract, then the IPA shall notify Buyer and Seller of same and provide to Buyer and Seller a revised Schedule A (and Schedule B if applicable) and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract. Upon the issuance of such written notice to Buyer and Seller, the Designated System and its associated RECs shall be

so removed, and Buyer shall be entitled to payment by Seller in the amount of the greater of: (i) the Collateral Requirement or (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.

6. **Deliveries and Quantity.**

(a) For each Designated System that has been Energized, the Delivery of at least one (1) REC from such Designated System is expected to occur to the Buyer's PJM-EIS GATS account or M-RETS account, as applicable, within ninety (90) days of when such Designated System was Energized if the Actual Nameplate Capacity of such Designated System is greater than 5kW or within one hundred eighty (180) days of when the Designated System was Energized if the Actual Nameplate Capacity of such Designated System is equal to or less than 5kW. For each Designated System that fails to Deliver at least (1) one REC from such Designated System by the applicable deadline, Seller must provide to Buyer and the IPA, with respect to such Designated System, a written notice within sixty (60) days of the applicable deadline to Deliver at least one (1) REC confirming that there are no technical issues, with respect to such Designated System, known to Seller that would impede the generation, issuance and Delivery of RECs from such Designated System or that such technical issues have been resolved by Seller. In the event that Seller fails to provide such written notice within sixty (60) days of the applicable deadline to Deliver at least one (1) REC, then the Designated System and the RECs associated with such Designated System shall be deemed removed from this REC Contract. As soon as practicable after the occurrence of such failure by Seller, the IPA shall provide to Buyer and Seller a revised Schedule A, Schedule B, and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract. Upon the occurrence of such failure, Buyer shall be entitled to payment by Seller in the amount of the greater of: (i) the Collateral Requirement for such Designated System or (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.

(b) For each Designated System that has been Energized, all RECs designated to be Delivered pursuant to the Standing Order associated with such Designated System shall be Delivered to Buyer commencing from the date such Standing Order is established through the end of the Delivery Term of such Designated System regardless of whether the total payment made by Buyer to Seller for RECs from such Designated System is commensurate with the actual number of RECs Delivered from such Designated System.

(c) For each Designated System that has been Energized, a REC delivery schedule is provided in Schedule B to the Product Order applicable to such Designated System that contains the expected number of RECs to be Delivered through the end of the Delivery Term where the number of RECs expected to be Delivered in each Delivery Year is based on the Designated System Contract Maximum REC Quantity and a degradation factor of half of one percent (0.5%) annually, and rounded down to the nearest whole REC in each Delivery Year. The REC quantities expected to be Delivered from such Designated System in a Delivery Year shall be the "Delivery Year Expected REC Quantity" for such Delivery Year. For avoidance of doubt, with respect to a Designated System, the Delivery Year Expected REC Quantities in the delivery schedule are determined at the time of Energization and not when the Delivery Term starts. As such, for purposes of calculating the Delivery Year Expected REC Quantity for each Delivery Year, the Delivery Year in which the date of Energization occurred shall be the first Delivery Year for which a Delivery Year Expected REC Quantity is calculated and the Delivery Year Expected REC Quantity for such first Delivery Year shall reflect an annualized number based on allocating the Designated System Contract Maximum REC Quantity across 15 years using a degradation factor of half of one percent (0.5%) annually. If the Delivery Term extends beyond a 15-Delivery Year schedule starting with that first Delivery Year, then each subsequent Delivery Year Expected REC Quantity subsequent to the 15<sup>th</sup> Delivery Year shall reflect a quantity that provides for a degradation factor of half of one percent (0.5%) from the prior Delivery Year Expected REC Quantity (a sample delivery schedule is provided in Exhibit F).

(d) Once annually on or prior to November 15 following a Delivery Year, the IPA shall review the performance of the REC deliveries made during such Delivery Year, using information provided in the

REC Annual Report submitted pursuant to Section 10(c) of the Cover Sheet, and determine the amount of Aggregate Drawdown Payment due as follows:

- (i) For each Designated System that has been Energized and three (3) full Delivery Years have occurred since the start of the Delivery Term of such Designated System, the IPA shall calculate, with respect to a Delivery Year, a Delivery Year REC Performance for such Delivery Year (an example Delivery Year REC Performance calculation is provided in Exhibit G);
- (ii) With respect to a Designated System that has been Energized and three (3) full Delivery Years have occurred since the start of the Delivery Term of such Designated System, in the event that the Delivery Year REC Performance is greater than the applicable Delivery Year Expected REC Quantity, the difference in the number of RECs shall be the “Delivery Year Surplus Amount” and each REC included in the Delivery Year Surplus Amount shall be a “Surplus REC”;
- (iii) With respect to a Designated System that has been Energized and three (3) full Delivery Years have occurred since the start of the Delivery Term of such Designated System, in the event that the Delivery Year REC Performance is less than the Delivery Year Expected REC Quantity, the difference in the number of RECs shall be the “Delivery Year Shortfall Amount”;
- (iv) For each Designated System that has a Delivery Year Shortfall Amount, starting with the Designated System with the lowest Contract Price, Surplus RECs from the Surplus REC Account shall be reduced and allocated to meet such Delivery Year Shortfall Amount, REC for REC. If there are insufficient Surplus RECs to meet the Delivery Year Shortfall Amount, then the number of RECs calculated as the difference between the Delivery Year Shortfall Amount and the sum of such Surplus RECs being applied to meet the Delivery Year Shortfall Amount is the “Drawdown REC Quantity”, and the multiplicative product of the Drawdown REC Quantity and the Contract Price of such Designated System is the “Drawdown Payment”; and
- (v) At the end of the foregoing process:
  - (1) Buyer shall inform Seller of the Aggregate Drawdown Payment (including any Drawdown Payment pursuant to Section 6(d)(iv) of the Cover Sheet and any Drawdown Payment pursuant to Section 6(e) of the Cover Sheet) by written notice and Seller may, within five (5) Business Days of such written notice, request for payment of the Aggregate Drawdown Payment to be made by additional cash transfer by Seller to Buyer or request for the payment of the Aggregate Drawdown Payment to be made from the cash or the Letter of Credit held as Seller’s Performance Assurance if both cash and a Letter of Credit are held as Seller’s Performance Assurance. If Buyer does not receive such request from Seller within such five (5) Business Day period, or if Seller makes a request within the five (5) Business Day period to pay with cash and then fails to remit the full cash payment by the fourteenth (14th) Business Day after Buyer’s written notice to Seller, Buyer shall draw on Seller’s Performance Assurance to reach the full amount of the Aggregate Drawdown Payment. If Buyer does receive such request from Seller for a draw on a particular form of Performance Assurance within such five (5) Business Day period, then Buyer shall draw on Seller’s Performance Assurance in the form requested. In all cases of a draw on Performance Assurance, the draw shall be made on or after the fifteenth (15th) Business Day after Buyer’s written notice to Seller. Seller shall be required to replenish Seller’s Performance

Assurance in accordance with Section 4.3 of the Master REC Agreement. If Seller's Performance Assurance is less than the Aggregate Drawdown Payment, or if Seller has requested to make such payments by additional cash transfer, then Seller shall pay Buyer the difference or the amount of such payments, respectively, within fifteen (15) Business Days of notice by Buyer. Failure by Seller to pay Buyer shall be an Event of Default subject to the Termination remedies under this REC Contract. Notwithstanding the foregoing, if this is not the last Delivery Year under this REC Contract and the amount of the Aggregate Drawdown Payment is less than \$5,000, then Buyer shall not draw on Seller's Performance Assurance, but will track such amount and add such amount to the Aggregate Drawdown Payment for the subsequent Delivery Year or Delivery Years until the earlier of: the last Delivery Year or such time when the Aggregate Drawdown Payment is at least \$5,000;

- (2) For purposes of calculating the Delivery Year REC Performance in future Delivery Years, each Designated System that has a Delivery Year Shortfall Amount for which such Delivery Year Shortfall Amount is covered by Surplus REC(s) and/or for which a payment from Seller or from Seller's Performance Assurance has been applied to the Drawdown REC Quantity, such Designated System is deemed to have Delivered REC quantities equal to the Delivery Year Expected REC Quantity in such Delivery Year.
- (e) If a Designated System is a Community Renewable Energy Generation Project, such Designated System must maintain at least the Community Solar Subscription Mix, the percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and the percent of Actual Nameplate Capacity that has been subscribed by End Use Customers as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet throughout the remainder of the Delivery Term after the issuance of such Community Solar First Year Report. Failure to maintain the Community Solar Subscription Mix and the percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and the percent of Actual Nameplate Capacity that has been subscribed by End Use Customers as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet in a Delivery Year shall result in payment to Buyer from Seller of a monetary amount, determined by the IPA, and Buyer may draw on Seller's Performance Assurance for this purpose. The Designated System must maintain the minimum Community Solar Subscription Mix required under the SFA for the REC price adder obtained in the Non-Anchor Tenant Contract Price that resulted from the Community Solar Subscription Mix indicated in the Community Solar First Year Report; the Designated System must also maintain the subscription shares of the Anchor Tenant and End Use Customers as indicated in the Community Solar First Year Report. For each Delivery Year after the issuance of the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet, then, using the REC Annual Report submitted under Section 10(c) of the Cover Sheet and at the same time as the calculations made under Section 6(d) of the Cover Sheet: the Community Solar Subscription Mix as well as the subscription share percentages of the Anchor Tenant and End Use Customers will each be calculated by the IPA as a daily average, then averaged over the Delivery Year. This daily average will be based on subscription start and end dates comprised of the day that a subscription start or end request was submitted to the utility, as entered in the REC Annual Report.

The draw on Seller's Performance Assurance will be calculated as the sum of the following: (i) the difference between (a) the Community Solar Anchor Payment allocable to that Delivery Year and (b) the amount that would have been paid for the Anchor Tenant's subscription share for that Delivery Year given the percent of Actual Nameplate Capacity that has been subscribed by Anchor Tenant in that Delivery Year, if (a) exceeds (b); and (ii)

the difference between (x) the Community Solar Non-Anchor Payment allocable to that Delivery Year and (y) the amount that would have been paid for the End Use Customers' subscription share for that Delivery Year given the realized Community Solar Subscription Mix and the percent of Actual Nameplate Capacity that has been subscribed by End Use Customers in that Delivery Year, if (x) exceeds (y).<sup>3</sup> (Provided, that the draw on Seller's Performance Assurance will simply equal the total payment allocable to that Delivery Year if the percent of Non-Anchor Nameplate Capacity that has been subscribed by End Use Customers in that Delivery Year is less than fifty percent (50%); but if this deficiency is due to the loss of an Anchor Tenant in the Delivery Year, the Seller shall have a specified period determined by the IPA from the end of the Delivery Year to cure the deficiency before such a draw is made. If the percent of Non-Anchor Nameplate Capacity that has been subscribed by End Use Customers is at least fifty percent (50%) at the end of such cure period, the draw on Seller's Performance Assurance will be calculated as the sum of the following: (i) the difference between (a) the Community Solar Anchor Payment allocable to that Delivery Year and (b) the amount that would have been paid for the Anchor Tenant's subscription share for that Delivery Year given the percent of Actual Nameplate Capacity that has been subscribed by Anchor Tenant in that Delivery Year); and (ii) the difference between (x) the Community Solar Non-Anchor Payment allocable to that Delivery Year and (y) the amount that would have been paid for the End Use Customers' subscription share for that Delivery Year given the realized Community Solar Subscription Mix and the percent of Actual Nameplate Capacity that has been subscribed by End Use Customers in that Delivery Year, if (x) exceeds (y), but will not be the total payment allocable to that Delivery Year.) This amount will be calculated in arrears for only the immediately preceding Delivery Year covered by the REC Annual Report. If a Designated System meets a Community Solar Subscription Mix requirement for a lower REC price adder than what was obtained following the Community Solar First Year Report, it will be deemed to have obtained that lower adder for the Delivery Year for the purposes of calculating the draw above. If the Designated System regains a Community Solar Subscription mix and subscription percentage at or above their contracted amount in subsequent years, a drawdown will not occur in those years; however, overperformance in a Delivery Year will not be banked or applied to past Delivery Years.

Designated Systems with total subscription levels (including only subscription shares of the Anchor Tenant and End Use Customers) above 90% of Actual Nameplate Capacity on a kW capacity basis for a Delivery Year will not be subject to a draw on Seller's Performance Assurance for that Delivery Year on the basis of subscription percentage. This calculation will only occur after the final Contract Price and quantity of RECs due payment are determined per Sections 5(f)(i)-(iii) of the Cover Sheet and will be based on that final Contract Price and quantity which is determined by the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet. Notwithstanding any of the foregoing, if the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers has decreased for a Delivery Year and such decrease is no more than three percentage points (3% points) relative to the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers as provided in the Community Solar First Year

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<sup>3</sup> For avoidance of doubt, the calculations made in this Section 6(e) shall not take into account any adjustments made pursuant to Section 5(f)(ii) or Section 5(f)(vi) of the Cover Sheet. For purposes of the calculating the (a) Community Solar Anchor Payment, (b) Community Solar Non-Anchor Payment, (c) the amounts that would have been paid for the Anchor Tenant's subscription share, and (d) the amounts that would have been paid for the End Use Customer's subscription share required pursuant to this section 6(e), the applicable Anchor Tenant Contract Price shall be applied to the share of the Actual Nameplate Capacity being subscribed by the Anchor Tenant only, and the applicable Non-Anchor Tenant Contract Price shall be applied to the share of the Actual Nameplate Capacity being subscribed by End Use Customers only.

Report submitted pursuant to Section 10(b) of the Cover Sheet, then no draw shall occur pursuant to this Section 6(e) for such Delivery Year as long as the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers for the immediately following Delivery Year is at least equal to the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet. In the event, the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers has decreased for a Delivery Year and such decrease is no more than three percentage points (3% points) relative to the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet, and the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers for the immediately following Delivery Year is less than the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet, then a draw shall be calculated for both Delivery Years consistent with the calculations laid out in this Section 6(e) above.<sup>4</sup>

Any draw for a Designated System in a Delivery Year calculated pursuant to this Section 6(e) shall be a Drawdown Payment, in addition to any Drawdown Payments calculated under Section 6(d)(iv) above. Buyer shall include information on any Drawdown Payment amounts due pursuant to this Section 6(e) for a Delivery Year by written notice, which may be with the written notice specified in Section 6(d)(v)(1) above for that Delivery Year.

- (f) During the Delivery Term, Seller may determine that a Designated System is not performing at the level expected. In such case, Seller may submit a request to Buyer and the IPA to have the Delivery obligations of such Designated System reduced, and if the request is accepted by Buyer, such request shall be in exchange for the return by Seller to Buyer of an agreed upon payment adjustment if payment has been made by Buyer for RECs from such Designated System. Such request shall include pertinent information related to the payment adjustment as well as requested changes to future Delivery Year Expected REC Quantity and Contract Nameplate Capacity. Any such request shall be deemed approved upon Buyer's receipt of such agreed upon payment adjustment, and information regarding the receipt of and the calculation of the agreed upon payment adjustment shall be communicated to the IPA. Any such changes in the delivery schedule and amendments made to future Delivery Year Expected REC Quantity and Contract Nameplate Capacity shall be documented in an amended Schedule B to the Product Order applicable to such Designated System issued by

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<sup>4</sup> For example, if the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers as provided in the Community Solar First Year Report is 70%, and the combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers for the fifth Delivery Year during the Delivery Term falls below 70% for the first time to 67%, then no draw shall occur pursuant to this Section 6(e) for such Delivery Year as long as the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers for the sixth Delivery Year during the Delivery Term is at least equal to 70%. If, for example, the total combined percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and by End Use Customers for the sixth Delivery Year is 68%, then a draw shall occur for each of the fifth and sixth Delivery Years based on Seller achieving only a 67% subscription rate in the fifth Delivery Year and only 68% subscriber rate in the sixth Delivery Year. For avoidance of doubt, the two draws in this example shall occur pursuant to Section 6(d)(v) at the conclusion of the annual review process for the sixth Delivery Year. For further avoidance of doubt, the draw for the sixth Delivery Year in this example shall be final and not subject to a refund or credit regardless of whether a subscription rate of at least 70% is achieved for the seventh Delivery Year or a subsequent Delivery Year.

the IPA to Buyer and Seller.

- (g) Surplus RECs are virtually tracked in the Surplus REC Account and shall remain, except as provided in Section 9.2 of the Master REC Agreement, in such account until a reduction in such Surplus RECs is recorded by the IPA to meet a Delivery Year Shortfall Amount.
  - (h) Upon the conclusion of the annual review process pursuant to Section 6(d) above for the last Delivery Year under this REC Contract, if (i) there are Surplus RECs remaining in the Surplus REC Account and (ii) a Drawdown Payment calculated under Section 6(d)(iv) above has occurred during the Term of this REC Contract, then the IPA shall calculate a monetary refund adjustment due to Seller from Buyer. Buyer shall credit Seller for each Surplus REC that can be applied to a REC associated with a Drawdown Payment as defined in the first sentence of this Section 6(h). For purpose of calculating the refund, Surplus RECs from the Surplus REC Account shall be reduced and applied to the RECs that are associated with a Drawdown Payment, starting with the REC with the lowest Contract Price, REC for REC. The monetary refund adjustment shall be paid from Buyer to Seller by December 31 following the conclusion of the last annual review process. For avoidance of doubt, no refund shall be made for any Drawdown Payment calculated pursuant to Section 6(e) of the Cover Sheet, and no payment shall be made for any Surplus RECs that remain in the Surplus REC Account after the refund adjustment is calculated.
7. **Environmental Attributes and Verification.** The Product is a Standard REC. The Seller acknowledges and agrees that any Environmental Attribute associated with or related to the Product, including without limitation any verified emissions reduction, (or the Product itself) will not be sold or otherwise made available to a third party but will be sold to Buyer pursuant to this REC Contract. For the avoidance of doubt, any Standard REC sold hereunder must meet the definition of “renewable energy credit” under the IPA Act.
8. **Applicable Program.** The Product is eligible for compliance with the Applicable Program. Seller warrants, as of the Effective Date and each date of Delivery, that the Product meets all the requirements of the Applicable Program for compliance. The Illinois Solar for All Program, as established under 20 Ill. Comp. Stat. 3855/1-56, is the Applicable Program for this REC Contract.
9. **Risk Allocation.** The Product is Regulatorily Continuing.
10. **Reporting.**
- (a) For each Designated System that is not yet Energized, Seller shall provide to Buyer and the IPA a System Status Form substantially in the form of Exhibit B bi-annually starting six (6) months from the Trade Date of the applicable Product Order that includes the Designated System.
  - (b) For each Community Renewable Energy Generation Project that is Energized, and after the conclusion of four (4) full Quarterly Periods after Energization, Seller shall provide to Buyer and the IPA a Community Solar First Year Report substantially in the form of Exhibit C on or after the first (1<sup>st</sup>) day of the month, but no later than the tenth (10<sup>th</sup>) day of the month of September, December, March or June for the fourth Quarterly Period if such fourth Quarterly Period concluded in August, November, February or May, respectively. Such Community Solar First Year Report shall indicate the percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and End Use Customers and the Community Solar



Subscription Mix.<sup>5</sup>

- (c) Seller shall submit to Buyer and the IPA a REC Annual Report substantially in the form of Exhibit D by July 15 following the end of each Delivery Year. If items on the REC Annual Report are deficient or require clarification, Buyer or the IPA may issue to Seller a written notice requesting clarification regarding such submission and Seller must respond to such request by the deadline specified in such written notice. Additional request for clarifications may be issued to Seller based on the responses provided. It is Seller's responsibility to ensure the accuracy and completeness of information contained in its REC Annual Report. Buyer or the IPA shall endeavor, on a commercially reasonable efforts basis, to notify Seller of any deficiency no later than October 1. In no event will Seller be allowed to provide further clarification on its REC Annual Report after October 13 following such submission deadline of the REC Annual Report. Failure by Seller to submit its REC Annual Report by July 15 or respond to any request for clarifications that comply with the requirements of Exhibit D by October 13 following such submission deadline is an Event of Default.
  - (d) All reports shall be due on the deadline specified, or the next Business Day if such specified due date is not a Business Day.
11. **REC Record Keeping.** Upon Delivery of the Product as provided hereunder, Seller will deliver such documentation as is required by the Certification Authority or the Applicable Program.
12. **REC Tracking Systems.**
- (a) The Parties will use PJM EIS GATS or M-RETS as the tracking system for the Product.
  - (b) The Parties shall work together to establish a Standing Order for a Designated System for the automatic recurring transfer of all RECs from such Designated System (or the percent of RECs from such Designated System corresponding to the percent of the Actual Nameplate Capacity being subscribed by the Anchor Tenant and End Use Customers at time of Energization, and as may be adjusted pursuant to Sections 5(f)(i)-(iii) of this REC Contract, if the Designated System is a Community Renewable Energy Generation Project, and any RECs that are not eligible for Delivery under the Standing Order shall be the exclusive property of Seller, to be utilized in Seller's sole discretion) to Buyer's account in PJM EIS GATS or M-RETS.
    - (i) Seller or a designee of Seller, as transferor of the RECs, shall confirm the Standing Order request within the PJM EIS GATS or M-RETS within thirty (30) days of the later of: the Designated System's Date of Final Interconnection Approval or the Trade Date of the Product Order that includes the Designated System. Buyer, as transferee, shall accept the Standing Order request within the PJM EIS GATS or M-RETS within thirty (30) days of receipt of such Standing Order request. When the Standing Order is initially established, the Standing Order shall indicate for REC transfers to recur indefinitely.
    - (ii) Seller shall provide written request to Buyer for the revocation of the Standing Order no earlier than thirty (30) days prior to the end of the Delivery Term of such Designated System (or as soon as practicable in the case of the removal of a Designated System from this REC Contract) and Buyer shall revoke the Standing Order within thirty (30) days of receipt of such request.

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<sup>5</sup> For example, if a Community Renewable Energy Generation Project is Energized on April 15, 2020, then the Community Solar First Year Report would be due on June 10, 2021 for the period commencing April 15, 2020 through May 31, 2021.

(iii) Buyer shall retire RECs Delivered from Designated Systems by the month after the receipt of such RECs in Buyer’s PJM-EIS GATS or M-RETS account. Buyer is not responsible for, and is under no obligation to return, any inadvertent transfer of RECs from a Designated System, including but not limited to, the Delivery of RECs beyond the Delivery Term of such Designated System if a timely confirmation of a Standing Order amendment is not initiated or timely request for revocation is not submitted by Seller or its designee.

(c) Seller shall Deliver the RECs in an unretired state.

(d) The Parties shall abide by the applicable rules of PJM EIS GATS or M-RETS. The Seller shall take all actions necessary to ensure creation of RECs and REC Delivery through the irrevocable Standing Order. Each Party shall bear the costs associated with performing its respective obligations in connection with such tracking system.

(e) Seller shall upload meter readings to PJM-EIS GATS or M-RETS at least annually prior to the registry cutoff to produce RECs for generation occurring in May as well as all previous months for which generation has not been recorded.

13. **Master REC Agreement Cover Sheet.** The following provisions include elections and modifications to the terms and conditions of the Master REC Agreement incorporated herein:

a. **Notices.**

Party A: \_\_\_\_\_

Party B: \_\_\_\_\_

All Notices:  
Street:  
City:  
State and ZIP:  
Attn:  
Phone:  
Email:  
Facsimile:  
Federal Tax ID Number:

All Notices:  
Street:  
City:  
State and ZIP:  
Attn:  
Phone:  
Email:  
Facsimile:  
Federal Tax ID Number:

**Invoices:**  
Attn:  
Phone:  
Email:

**Invoices:**  
Attn:  
Phone:  
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With a copy to:  
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With a copy to:  
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**Payments:**  
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**Payments:**  
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**Credit and Collections:**  
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**Credit and Collections:**  
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Phone:  
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Phone:  
Email:

**REC Deliveries and Standing Orders:**

Attn:  
Phone:  
Email:

**REC Deliveries and Standing Orders:**

Attn:  
Phone:  
Email:

With additional Notices of an Event of  
Default or Potential Event of Default to:

With additional Notices of an Event of  
Default or Potential Event of Default to:

Attn:  
Phone:  
Email:

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Phone:  
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- b. The following changes are made to Article 1: Definitions of the Master REC Agreement

The following is added as Section 1.1.1:

““100% Low-Income Subscriber Owned Project” means, with respect to a Designated System that is a Community Renewable Energy Generation Project, such Designated System being 100% owned by subscribers that are End Use Customers, not-for-profit organization(s), and/or affordable housing owner(s) within the first six (6) years of Energization; where whether an organization is deemed to be an eligible not-for-profit organization or eligible affordable housing owner for this purpose shall be determined by the IPA.”

The following is added as Section 1.1.2:

““ABP” means the Illinois Adjustable Block Program established under 20 Ill. Comp. Stat. 3855/1-75.”

The following is added as Section 1.1.3:

““Actual Nameplate Capacity” means, with respect to a Designated System, the actual Nameplate Capacity of such Designated System immediately prior to Energization, as indicated in its SFA Part 2 application.”

The definition of “Affiliate” in Section 1.2 is replaced in its entirety with the following:

““Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, with “control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies, or activities of a person, whether through ownership or voting securities, by contract or otherwise.”

The following is added as Section 1.3.1:

““Aggregate Drawdown Payment” means, with respect to a Delivery Year, the amount equal to the sum of the Drawdown Payments due from Seller to Buyer across all Designated Systems under this Agreement for such Delivery Year, and as may include any adjustment pursuant to Section 6(d)(v)(1) and Section 6(e) of the Cover

Sheet.”

The following is added as Section 1.3.2:

““Anchor Tenant” means, with respect to a Community Renewable Energy Generation Project, the non-End Use Customer subscriber designated by Seller as such under its SFA application.”

The following is added as Section 1.3.3:

““Anchor Tenant Contract Price” means, with respect to a Community Renewable Energy Generation Project, the REC price applicable to RECs associated with the shares subscribed by the Anchor Tenant. If the Anchor Tenant is an eligible non-profit or public-sector facility under the SFA Low Income Community Solar Project Initiative, then such REC price shall equal the applicable SFA price under the SFA Low Income Community Solar Project Initiative, otherwise the REC Price shall be the applicable ABP price. Unless otherwise specified, the ABP price shall be the REC price applicable to the Proposed Nameplate Capacity under the ABP at the time of the SFA Application, as may be adjusted pursuant to Section 5(e) of the Cover Sheet of the REC Contract. Further, the Anchor Tenant Contract Price shall not include any adders that may be applicable to the Community Solar Subscription Mix.”

The following is added as Section 1.3.4:

““Approved Vendor” means the entity approved by the IPA under the SFA to be eligible for an award of a REC Contract under the SFA.”

The definition of “Bankrupt” in Section 1.7 is amended by replacing “30 days” in clause (ii) with “60 days.”

The following is added as Section 1.10.1:

““Capacity Factor” means, with respect to a Designated System, the factor indicated as such in Schedule A (before the date of Energization) or Schedule B (on or after the date of Energization) of the Product Order that is applicable to such Designated System; where such factor is the percentage factor used for the calculation of REC production approved by the IPA under the SFA.”

The following is added as Section 1.15.1:

““Class of Resource” means the specific Renewable Energy Source associated with a Designated System as specified in Schedule A or Schedule B to the Product Order that is applicable to such Designated System; namely either a Distributed Renewable Energy Generation Device or a Community Renewable Energy Generation Project.”

The following is added as Section 1.15.2:

““Collateral Requirement” means, (i) with respect to a Designated System that is not Energized, an amount equal to five percent (5%) of the multiplicative product of the (a) Proposed Price and (b) Designated System Expected Maximum REC Quantity; and means, (ii) with respect to a Designated System that is Energized, an amount equal to five percent (5%) of the multiplicative product of the (a) Contract Price, (b) Designated System Contract Maximum REC Quantity and (c) the result obtained by dividing the number of Delivery Years remaining in the Delivery Term by the number

of Delivery Years in the Delivery Term. For avoidance of doubt, for the Delivery Year in which a Designated System is deemed to have become a 100% Low-Income Subscriber Owned Project, the Collateral Requirement for such Designated System shall include 5% of the additional payment applicable to 100% Low-Income Subscriber Owned Projects, which may be withheld pursuant to Section 5(f)(vi) of the Cover Sheet, and such additional Collateral Requirement shall be equal to five percent (5%) of the multiplicative product of (a) \$5 per REC, (b) Designated System Contract Maximum REC Quantity and (c) the result obtained by dividing the number of Delivery Years remaining in the Delivery Term by the number of Delivery Years in the Delivery Term for subsequent Delivery Years. Further, notwithstanding the foregoing, the Collateral Requirement for a Designated System shall be reduced to zero (i) if the Designated System is removed from this Agreement or (ii) upon the conclusion of the annual review process pursuant to Section 6(d) of the Cover Sheet following the final Delivery Year that falls (fully or partially) within the Designated System's Delivery Term if the Designated System is a Distributed Renewable Energy Generation Device or (iii) upon the conclusion of the annual review process pursuant to Section 6(d) of the Cover Sheet following the tenth (10<sup>th</sup>) Delivery Year that falls (fully or partially) within the Designated System's Delivery Term if the Designated System is a Community Renewable Energy Generation Project."

The following is added as Section 1.15.3:

““Community Renewable Energy Generation Project” means a generating unit that (i) is powered by photovoltaic cells and panels; (ii) is interconnected at the distribution system level in Illinois of Ameren Illinois Company, Commonwealth Edison Company, MidAmerican Energy Company, Mt. Carmel Public Utility Co., or a “public utility” as defined in Section 3-105 of the Illinois Public Utilities Act, “municipal utility” as defined in Section 1-10 of the IPA Act, or a “rural electric cooperative” as defined in Section 3-119 of the Illinois Public Utilities Act; (iii) credits the value of electricity generated by the facility to the subscribers of the facility; (iv) is limited in Nameplate Capacity to no more than 2,000 kW; and (v) is installed by qualified persons in compliance with Section 16-128A of the Public Utilities Act and any rules and regulations adopted thereunder.”

The following is added as Section 1.15.4:

““Community Solar Anchor Payment” means, solely for purposes of determining the calculations under Section 6(e) of the Cover Sheet, with respect to a Delivery Year, the indicative payment associated with RECs for the portion of the Designated System subscribed by the Anchor Tenant and shall equal the multiplicative product of (a) the Anchor Tenant Contract Price, (b) the lesser of the Proposed Nameplate Capacity or the Actual Nameplate Capacity, (c) Capacity Factor, (d) 8,760 hours, (e) the result obtained by dividing the number of days in the Delivery Year contained in the Delivery Term by the number of days in such Delivery Year and (f) percent of the Actual Nameplate Capacity that is being subscribed by the Anchor Tenant as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet.”

The following is added as Section 1.15.5:

““Community Solar First Year Report” means a report that Seller must submit to Buyer and the IPA pursuant to Section 10(b) of the Cover Sheet, which shall be submitted on the tenth (10<sup>th</sup>) day of the month immediately succeeding the fourth full Quarterly Period after Energization, indicating the percent of Actual Nameplate

Capacity that has been subscribed by the Anchor Tenant and End Use Customers and the Community Solar Subscription Mix.”

The following is added as Section 1.15.6.:

““Community Solar Non-Anchor Payment” means, solely for purposes of determining the calculations under Section 6(e) of the Cover Sheet, with respect to a Delivery Year, the indicative payment associated with RECs for the portion of the Designated System subscribed by End Use Customers and shall equal the multiplicative product of (a) the Non-Anchor Tenant Contract Price, (b) the lesser of the Proposed Nameplate Capacity or the Actual Nameplate Capacity, (c) Capacity Factor, (d) 8,760 hours, (e) the result obtained by dividing the number of days in the Delivery Year contained in the Delivery Term by the number of days in such Delivery Year and (f) percent of the Actual Nameplate Capacity that is being subscribed by End Use Customers as provided in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet.”

The following is added as Section 1.15.7.:

““Community Solar Subscription Mix” means, with respect to a Community Renewable Energy Generation Project, the percent of its Actual Nameplate Capacity that is subscribed by Small Subscribers.”

The following is added as Section 1.16.1:

““Contract Nameplate Capacity” means, with respect to a Designated System that has been Energized, the Nameplate Capacity as indicated by the IPA in Schedule B to the Product Order that is applicable to such Designated System, and as may be amended pursuant to Section 6(f) of the Cover Sheet. With respect to a Distributed Renewable Energy Generation Device, unless provided elsewhere in the Agreement, the Contract Nameplate Capacity shall be the lesser of the Proposed Nameplate Capacity and the Actual Nameplate Capacity. With respect to a Community Renewable Energy Generation Project, the Contract Nameplate Capacity shall equal the multiplicative product of (a) the lesser of the Proposed Nameplate Capacity and the Actual Nameplate Capacity and (b) the percent of the Actual Nameplate Capacity that is being subscribed by the Anchor Tenant and End Use Customers at the time of Energization, and as may be adjusted, pursuant to Sections 5(f)(i)-(iii) of the Cover Sheet based on information contained in the Community Solar First Year Report submitted pursuant to Section 10(b) of the Cover Sheet.”

The following is added as Section 1.16.2:

““Contract Price” means, with respect to a Designated System, the REC price specified in the Schedule B to the Product Order applicable to such Designated System that will be used for purposes of payment for RECs from such Designated System; the Contract Price, with respect to a Community Renewable Energy Generation Project, shall be a weighted price obtained by dividing (1) the sum of (a) the multiplicative product of (j) the Anchor Tenant Contract Price and (k) the share of the Actual Nameplate Capacity subscribed by the Anchor Tenant and (b) the multiplicative product of (x) the Non-Anchor Tenant Contract Price and (y) the share of the Actual Nameplate Capacity subscribed by End Use Customers by (2) the combined share of the Actual Nameplate Capacity subscribed by the Anchor Tenant and End Use Customers, which result shall be rounded to the nearest penny and shall be subject to any adjustments pursuant to Sections 5(f)(i), (ii) and (vi) of the Cover

Sheet. For avoidance of doubt, any adjustment to the Contract Price shall reflect the value of the RECs to be delivered from the time of the adjustment and not the weighted value of RECs that includes RECs previously delivered.”

The following is added as Section 1.19.1:

““Default Rate” means a rate per annum equal to four percentage points (4%) over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates.””

The following is added as Section 1.19.2:

““Date of Final Interconnection Approval” means, with respect to a Designated System, the date recorded in Schedule B to the Product Order that is applicable to such Designated System as determined by the IPA as the date such Designated System received its approval to interconnect by the applicable electric utility approving the interconnection request.”

The definition of “Delivery” in Section 1.21 is replaced in its entirety with the following:

““Deliver” or “Delivered” or “Delivery” means the transfer from Seller to Buyer of the Product, as specified pursuant to the Agreement, including, as specified or required by the Applicable Program, recognition by the Administrator and Certification Authority of the transfer to Buyer, or Seller’s delivery to Buyer of a Transfer Certificate. Delivery of Product is independent of delivery of the electricity with which the Product is associated.”

The definition of “Delivery Date” in Section 1.22 is replaced in its entirety with the following:

““Delivery Date” means, with respect to a Designated System, the scheduled date for the transfer of RECs each month pursuant to a Standing Order commencing from the day the Standing Order is established through the end of the Delivery Term.”

The following is added as Section 1.22.1:

““Delivery Term” of a Designated System means the period (i) starting on first day of the month following the date the first REC from such Designated System is Delivered to Buyer, and (ii) ending on the last day of the month that is one hundred eighty (180) months thereafter; provided that such one hundred eighty (180) month period shall be automatically extended day for day for each day of any Suspension Period up to a maximum extension of seven hundred thirty (730) days.”

The following is added as Section 1.22.2:

““Delivery Year” means the twelve (12) calendar months beginning with June of one calendar year through and including May of the following calendar year.”

The following is added as Section 1.22.3:

““Delivery Year Expected REC Quantity” means, with respect to a Designated System and a Delivery Year, the expected number of RECs from such Designated System to be Delivered from Seller to Buyer in such Delivery Year as more fully described in Section 6(c) of the Cover Sheet of the REC Contract, as may be adjusted pursuant to Sections 5(f)(i)-(iii) of the Cover Sheet, and as may be amended pursuant

to Section 6(f) of the Cover Sheet.”

The following is added as Section 1.22.4:

““Delivery Year REC Performance” means, with respect to a Designated System and a Delivery Year, the number of RECs that is associated with a historical 3-year rolling average of REC Deliveries from such Designated System that has occurred and that will be used to compare against the Delivery Year Expected REC Quantity for such Delivery Year. The Delivery Year REC Performance is calculated as a 3-year rolling average based on actual REC Deliveries that occurred in the preceding three (3) Delivery Years. For avoidance of doubt, the Delivery Year REC Performance will only be calculated after the occurrence of three (3) full Delivery Years after the start of the Delivery Term of such Designated System. Further, if the last Delivery Year contained in the Delivery Term is less than 12 full months, then for purposes of calculating the Delivery Year REC Performance, only RECs delivered during the last 36 months of the Delivery Term shall be used for calculating the 3-year rolling average for that last Delivery Year. For example, if the Delivery Term with respect to a Designated System terminates on February 28, 2035, then the Deliveries occurring from March 1, 2032 through February 28, 2035 will be used for purposes of calculating the 3-year rolling average for the 2034-2035 Delivery Year. Further, if such Designated System is a Community Renewable Energy Generation Project, then the initial Delivery Year REC Performance calculated after the occurrence of three (3) full Delivery Years after the start of the Delivery Term of such Designated System shall be equal to the greater of: (a) the 3-year rolling average based on actual REC Deliveries that occurred in the preceding three (3) Delivery Years or (b) the 2-year rolling average based on actual REC Deliveries that occurred in the preceding two (2) Delivery Years.”

The following is added as Section 1.22.5:

“Delivery Year Shortfall Amount” means, with respect to a Designated System and a Delivery Year, the positive difference between the Delivery Year Expected REC Quantity and the Delivery Year REC Performance applicable to such Designated System in such Delivery Year.”

The following is added as Section 1.22.6:

“Delivery Year Surplus Amount” means, with respect to a Designated System and a Delivery Year, the positive difference between the Delivery Year REC Performance and the Delivery Year Expected REC Quantity applicable to such Designated System in such Delivery Year.”

The following is added as Section 1.22.7:

““Designated System” means a Renewable Energy Facility that is selected by the IPA through the SFA and approved by the ICC for inclusion in this Agreement as of the Trade Date of a Product Order. All Designated Systems under this REC Contract shall either be a Distributed Renewable Energy Generation Device or a Community Renewable Energy Generation Project.”

The following is added as Section 1.22.8:

““Designated System Contract Maximum REC Quantity” means, with respect to a Designated System, the number of RECs expected to be Delivered under this



Agreement as of the date of Energization, which unless amended or adjusted subsequently thereto, and shall be equal to the multiplicative product of (a) Contract Nameplate Capacity (in MW), (b) Capacity Factor, (c) 8,760 hours and (d) 15 years, which result shall be rounded down to the nearest whole REC.”

The following is added as Section 1.22.9:

““Designated System Expected Maximum REC Quantity” means, with respect to a Designated System, the number of RECs expected to be Delivered under this Agreement as of the Trade Date and shall be equal to the multiplicative product of (a) Proposed Nameplate Capacity (in MW), (b) Capacity Factor, (c) 8,760 hours and (d) 15 years, which result shall be rounded down to the nearest whole REC.”

The following is added as Section 1.22.10:

““Designated System Paid REC Quantity” means, with respect to a Designated System, a number of RECs equal to the result obtained by dividing the total payments made by Buyer to Seller for RECs from such Designated System by the Contract Price.”

The following is added as Section 1.23.1:

““Distributed Renewable Energy Generation Device” means a generating unit that (i) is powered by photovoltaic cells and panels; (ii) is interconnected at the distribution system level in Illinois of Ameren Illinois Company, Commonwealth Edison Company, MidAmerican Energy Company, Mt. Carmel Public Utility Co., or a “municipal utility” as defined in Section 1-10 of the IPA Act, or a “rural electric cooperative” as defined in Section 3-119 of the Illinois Public Utilities Act; (iii) located on the customer side of the customer's electric meter and is primarily used to offset that customer's electricity load; (iv) is limited in Nameplate Capacity to no more than two thousand (2,000) kW; and (v) is installed by qualified persons in compliance with Section 16-128A of the Public Utilities Act and any rules and regulations adopted thereunder.”

The following is added as Section 1.24.1:

““Drawdown Payment” means, for a Delivery Year, (i) with respect to a Designated System that has a Drawdown REC Quantity, the portion of the Aggregate Drawdown Payment attributed to such Designated System based on calculations described in Section 6(d)(iv) of the Cover Sheet of the REC Contract, or (ii) with respect to a Designated System that is a Community Renewable Energy Generation Project, the portion of the Aggregate Drawdown Payment attributed to such Designated System based on calculations described in Section 6(e) of the Cover Sheet.”

The following is added as Section 1.24.2:

““Drawdown REC Quantity” means, with respect to a Designated System that has a Delivery Year Shortfall Amount, the positive difference (if any) between the Delivery Year Shortfall Amount and the sum of Surplus RECs applied to meet such Delivery Year Shortfall Amount.”

The following is added as Section 1.26.1:

““Energization,” “Energize” or “Energized” means, with respect to a Designated

System, the approval by the IPA that a Designated System has met all requirements for energization under the SFA, including the establishment of a Standing Order. If the Designated System is a Community Renewable Energy Generation Project, Energization shall also include the occurrence of at least fifty percent (50%) of the Non-Anchor Nameplate Capacity of the Designated System being subscribed by End Use Customers (through a “subscription” as defined in Section 1-10 of the IPA Act).”

The last sentence of the definition of “Environmental Attribute” in Section 1.27 is replaced in its entirety with the following:

“Environmental Attributes do not include production or investment tax credits, other federal, state or local tax benefits, incentives or deductions, or other direct third-party subsidies for generation of electricity by the Designated System(s), all of which credits, benefits, incentives, deductions or subsidies are reserved exclusively to the owner of the Designated System.”

The following is added as Section 1.27.1:

““End Use Customer” means, either: (a) with respect to a Designated System that is a Distributed Renewable Energy Generation Device, an eligible customer under the SFA for which the Designated System’s output is primarily used to offset that customer’s electricity load or (b) with respect to a Designated System that is a Community Renewable Energy Generation Project, an eligible low-income residential customer under the SFA with a subscription to a Community Renewable Energy Generation Project. The specific utility customer classes under this definition shall be as determined by the IPA.”

The following is added as Section 1.35.1:

““ICC” means the Illinois Commerce Commission.”

The following is added as Section 1.37.1:

““Invoice Due Date” means the tenth (10<sup>th</sup>) day of the month immediately succeeding a Quarterly Period.”

The following is added as Section 1.37.2:

““IPA” means the Illinois Power Agency. For purposes of any contract administration responsibilities assigned to the IPA under this REC Contract, “IPA” also includes its designee(s), including the ABP Program Administrator and the SFA Program Administrator.”

The following is added as Section 1.37.3:

““IPA Act” means the Illinois Power Agency Act, 20 ILCS 3855.”

The following is added as Section 1.37.4:

““kW” means kilowatts AC unless noted otherwise.”

The following is added as Section 1.37.5:

““Letter of Credit” means an irrevocable, transferable standby letter of credit issued

by a major U.S. commercial bank or the U.S. branch office or U.S. agency office of a foreign bank utilizing either of the forms attached as Exhibit E to the REC Contract or utilizing such forms with minor modifications that are acceptable to Buyer in its sole discretion.”

The following is added as Section 1.38.1:

““Maximum Allowable Payment” means the monetary payment amount calculated at a point in time and indicated in a Quarterly Netting Statement that cumulatively cannot be exceeded when Buyer is making payment to Seller. The Maximum Allowable Payment will be the sum of payments that can be made at a point in time across payments associated with RECs from all Designated Systems that have been Energized and will reflect a one-time full payment of one hundred percent (100%) of the REC Purchase Payment Amount associated with a Designated System, which payment calculation shall also be subject to adjustments in accordance with the terms of this Agreement, including (without limitation) Section 5(f) of the Cover Sheet.”

The following is added as Section 1.40.1:

““Nameplate Capacity” means the aggregate maximum continuous inverter nameplate capacity in kilowatts AC.”

The following is added as Section 1.40.2:

““Non-Anchor Nameplate Capacity” means the portion of the Actual Nameplate Capacity in kilowatts AC that is not subscribed by the Anchor Tenant, as established at the date of Energization and as may be adjusted pursuant to Sections 5(f)(i)-(iii) of the Cover Sheet.”

The following is added as Section 1.40.3:

““Non-Anchor Tenant Contract Price” means, with respect to a Community Renewable Energy Generation Project, the REC price applicable to RECs associated with the shares subscribed by the End Use Customer. Unless otherwise specified, the SFA price shall be the REC price applicable to the Proposed Nameplate Capacity under the SFA at the time of the SFA Application, as may be adjusted pursuant to Section 5(e) of the Cover Sheet of the REC Contract.”

The following is added as Section 1.44.1:

““Performance Assurance Amount” means the monetary amount to be posted by Seller as Seller’s Performance Assurance equal to the sum of the Collateral Requirement across all Designated Systems included in this Agreement; provided that the only procedures for reducing the required posting of Seller’s Performance Assurance shall be as provided in Section 4.3 of the Master REC Agreement.”

Section 1.48 is amended by replacing the phrase “failure of performance by the Potentially Non-Defaulting Party” in the second line of the section with “failure of performance by the Potentially Defaulting Party”.

The following is added as Section 1.51.1:

““Proposed Nameplate Capacity” means, with respect to a Designated System, the

Nameplate Capacity proposed for such Designated System by Seller in its SFA Part 1 application.”

The following is added as Section 1.51.2:

““Proposed Price” means, with respect to a Designated System, the REC price applicable to the Designated System as established under the SFA and indicated in Schedule A to the Product Order applicable to such Designated System at the time of the Trade Date of such Product Order. For avoidance of doubt, the Proposed Price shall be the SFA price regardless of whether an Anchor Tenant is proposed or not.”

The following is added as Section 1.51.3:

““Public Utilities Act” means the Illinois Public Utilities Act, 220 ILCS 5.”

The following is added as Section 1.52.1:

““Quarterly Netting Statement” means a statement prepared by the IPA that includes the Maximum Allowable Payment that can be made as of the issuance date of the Quarterly Netting Statement by Buyer to Seller under this Agreement across all Transactions.”

The following is added as Section 1.52.2:

““Quarterly Period” means, with respect to a Delivery Year, the quarterly periods of (i) June 1 through August 31, (ii) September 1 through November 30, (iii) December 1 through February 28 (or February 29 in leap years), and (iv) March 1 through May 31).”

The definition of “Regulatorily Continuing” in Section 1.53 is replaced in its entirety with the following:

““Regulatorily Continuing” means, with respect to a Transaction, the Product shall comply with the requirements of the Applicable Program, as of each Delivery Date, and Seller will do what is necessary to cause the Product that is delivered to comply with such requirements; except as otherwise provided in Article 7.”

The following is added as Section 1.54.1:

““REC Purchase Payment Amount” means, with respect to a Designated System that has been Energized, the total monetary amount for payment of RECs from such Designated System as confirmed by the IPA and as indicated in the Schedule B to the Product Order that is applicable to such Designated System. The REC Purchase Payment Amount shall, with respect to a Designated System, equal the multiplicative product of the Contract Price and the Designated System Contract Maximum REC Quantity, as these amounts may be amended or adjusted in accordance with the terms of this Agreement, including (without limitation) Section 5(f)(i)-(iii) and Section 5(f)(vi) of the Cover Sheet.”

The following is added as Section 1.54.2:

““REC Annual Report” means a report substantially in the form provided in Exhibit D that is submitted by Seller to Buyer and the IPA on an annual basis by July 15 following the end of a Delivery Year, which contains information related to the

developmental progress and/or REC Deliveries of Designated Systems included in this REC Contract.”

The following is added as Section 1.55.1:

““Renewable Energy Resources Fund” means, with respect to this Agreement, a State of Illinois special fund as established by Section 1-56 of the Illinois Power Agency Act.”

The following is added as Section 1.58.1:

““Scheduled Energized Date” means, with respect to a Designated System, such date as indicated on Schedule A to the Product Order that is applicable to such Designated System; which shall be, unless extended pursuant to Section 5(b) of the Cover Sheet, the date that is twelve (12) months from the Trade Date of such Product Order if the Designated System is a Distributed Renewable Energy Generation Device or eighteen (18) months from the Trade Date of such Product Order if the Designated System is a Community Renewable Energy Generation Project.”

The following is added as Section 1.61.1:

““SFA” means the Illinois Solar for All Program established under 20 Ill. Comp. Stat. 3855/1-56(b).”

The following is added as Section 1.61.2:

““Small Subscriber” means an eligible low-income residential customer under the SFA with a subscription to a Community Renewable Energy Generation Project where such subscription is below 25 kW. The specific utility customer classes under this definition shall be as determined by the IPA.”

The following is added as Section 1.62.1:

““Standing Order” means, with respect to a Designated System, an agreement registered with PJM EIS GATS or M-RETS for the automatic transfer of RECs issued for the Designated System to Buyer’s Account on a recurring basis commencing no earlier than the Trade Date and expiring no earlier than the last day of the Delivery Term of such Designated System.”

The following is added as Section 1.62.2:

““Surplus REC” means, with respect to a Designated System, a REC included in the Delivery Year REC Performance of such Designated System that (i) is in excess of the corresponding Delivery Year Expected REC Quantity of such Designated System in a given Delivery Year and (ii) is virtually tracked and recorded in the Surplus REC Account. A Surplus REC may be used to meet a Delivery Year Shortfall Amount of such Designated System or another Designated System in such Delivery Year or future Delivery Year and when so used, shall cease to be Surplus RECs.”

The following is added as Section 1.62.3:

““Surplus REC Account” means, with respect to this Agreement, a virtual account tracked by the IPA, that contains Surplus RECs from Designated Systems included

in this Agreement across all Transactions.”

The following is added as Section 1.62.4:

““Suspension Period” means the period of time during which the obligations of the Parties under this Agreement are (a) suspended, with respect of the Agreement, in accordance with Section 2.2 of this Agreement or (b) suspended, with respect of a Designated System or Designated Systems, in accordance with Article 6 of this Agreement.”

The following is added as Section 1.63.1:

““Term” means, unless terminated earlier, the period from the Effective Date until December 31 following the conclusion of the last annual review process pursuant to Section 6(d) of the Cover Sheet.”

The definition of “Transfer Certificate” in Section 1.68 is replaced in its entirety with the following:

““Transfer Certificate” means a transfer of a REC in the PJM-GATS or M-RETS tracking registry otherwise satisfying the requirements of the Parties and any specified Applicable Program.”

c. The following changes are made to Article 2:

Section 2.1 (Transactions) shall not apply.

Section 2.2 (Payment) is replaced in its entirety with the following:

“During the Term of this Agreement, Seller will render to the Buyer an invoice by electronic mail for the payment obligations of Buyer to Seller on or after the first (1<sup>st</sup>) day of the month, but no later than the tenth (10<sup>th</sup>) day of the month (the “Invoice Due Date”) of September, December, March and June if there are amounts eligible for payment by Buyer to Seller. The IPA shall endeavor, on a commercially reasonable efforts basis, to issue to Seller such Quarterly Netting Statement by the first (1<sup>st</sup>) business day of the month following the conclusion of a Quarterly Period in which a Designated System is Energized or the conclusion of a Quarterly Period if there is a change to the Maximum Allowable Payment that can be made under the Agreement since the last issuance of the Quarterly Netting Statement.

For purposes of payment, the Quarterly Netting Statement will reflect a one-time full payment of one hundred percent (100%) of the REC Purchase Payment Amount associated with a Designated System, which payment calculation shall also be subject to adjustments in accordance with the terms of this Agreement, including (without limitation) Sections 5(f)(i)-(iii) and 5(f)(vi) of the Cover Sheet.

Further, if the IPA delivers notice to Buyer that any portion of the Product Delivered by Seller does not conform to the requirements of this Agreement (such Product the “Non-Conforming Product”), Buyer’s payment obligation with respect to any Non-Conforming Product shall be excused.

No more than one (1) invoice will be processed for payment for each Quarterly Period. If Seller fails to render an invoice by the Invoice Due Date, no payment will

be processed for that Quarterly Period. For any amounts associated with late invoices, those amounts shall be eligible to be included in the following Quarterly Period's invoice for subsequent payment. Buyer shall not be obligated to pay any invoice that is delivered more than six (6) months after the end of the Term of this Agreement.

Each invoice shall include: (a) the invoice amount, (b) the cumulative amount that has been received by Seller under this Agreement, (c) the Maximum Allowable Payment indicated in the most recent Quarterly Netting Statement and (d) the applicable PJM EIS GATS and/or M-RETS Unit IDs of Designated Systems that have been Energized.

If Seller has not previously registered for direct deposit with the State of Illinois Comptroller, Buyer will make the first payment by check. After Buyer's first payment, Seller may choose to receive payments by electronic funds transfer. If Seller wishes to receive payments by electronic funds transfer, Seller shall sign up for direct deposit with the State of Illinois Comptroller. (For more information, see: <https://illinoiscomptroller.gov/vendors/direct-deposit-sign-up/>).

Buyer may, in good faith, dispute the correctness of any invoice within six (6) months after receipt of such invoice. Any invoice dispute must be in writing and state the basis for the dispute, which must be made in good faith. Subject to Section 5.4 of this Agreement, a Party may withhold payment of the disputed amount until two (2) Business Days following the resolution of the dispute, and any amounts not paid when originally due and subsequently determined to be due and payable will bear interest at the Default Rate from the due date as originally invoiced.

Inadvertent overpayments will be returned upon request or credited by the Party receiving such overpayment against amounts subsequently due from the other Party. Any dispute with respect to an invoice is waived unless the disputing Party notifies the other Party in accordance with this Section 2.2 within six (6) months after the invoice is rendered. If final resolution of the dispute is not completed within sixty (60) days after notification of the dispute, the Parties shall be free to pursue any available legal or equitable remedy.

Buyer shall on an annual basis seek an appropriation by the State of Illinois for the Renewable Energy Resources Fund sufficient to allow payment under this Agreement. If Buyer fails to receive such appropriation approval for a given fiscal year, Buyer shall notify Seller of such and Buyer may terminate or suspend this Agreement within thirty (30) calendar days after the date of such notification to Seller. Buyer must provide notice of such termination or suspension to Seller in accordance with the provisions of this Agreement. If terminated, neither Party shall have any further liability hereunder upon such termination.

Section 2.3 (Confirmation) shall not apply.

Section 2.8 is amended by replacing "consented to be Seller" with "consented to by Seller" in the seventeenth line and delete the last sentence of Section 2.8.

Section 2.9 (Scope of Agreement) shall not apply.

d. The following changes are made to Article 3:

Subsection (l) of Section 3.1 is amended by moving the words “to its knowledge” to the start of the subsection.

Subsection (m) of Section 3.1 is amended by replacing the second reference to “United States Bankruptcy Code §101(26)” with “United States Bankruptcy Code §101(25).”

Subsection (n) of Section 3.1 is amended by replacing “United States Commodity Exchange Act §§1a(11) and 1a(12)” with “United States Commodity Exchange Act §§1a(17) and 1a(18).”

Section 3.2 is amended by replacing “by any” with “of any” in the eighteenth line.

Section 3.4 is amended by replacing “such Party’s” in the section with “the indemnified Party’s”.

- e. The following changes are made to Article 4:

Section 4.1 shall not apply.

Section 4.2 shall not apply.

Collateral Threshold is applicable with respect to Seller, but not with respect to Buyer, and Section 4.3 shall apply to Seller as amended and restated in its entirety as follows:

“Performance Assurance.

(a)

Seller shall be required, within thirty (30) Business Days of the Trade Date of a Product Order, to post “Seller’s Performance Assurance” through either the: (i) posting of a Letter of Credit; or (ii) posting of cash collateral with Buyer.

The amount of Performance Assurance posted with respect to any Product Order in effect shall be equal to the sum of the Collateral Requirement across all Designated Systems included in such Product Order. Following the posting of required Performance Assurance for any Product Order in effect, the total amount of such Seller’s Performance Assurance shall be equal to the sum of the Collateral Requirement across all Designated Systems included in this Agreement (“Performance Assurance Amount”).

If a Designated System is otherwise Energized as of the Trade Date pending the full establishment of the Standing Order and where such Standing Order request has been initiated by Seller as of the Trade Date, Seller may request for Buyer to withhold, and if so requested, Buyer shall withhold, a portion of the first REC payment in the amount of the Collateral Requirement of such Designated System as Seller’s Performance Assurance in respect of such Designated System in lieu of the timing required by the first paragraph of this Section.

Collateral Requirement for a Designated System will increase, with a commensurate required increase in Performance Assurance, at the time of a payment adjustment pursuant to Sections 5(f)(i)-(iii) or Section 5(f)(vi) of the Cover Sheet.

In the event Buyer draws on Seller’s Performance Assurance pursuant to Section 6(d)(v)(1) or Section 6(e) of the Cover Sheet (or as otherwise provided herein), Seller



shall be required, within ninety (90) days of such drawing, to post as Seller's Performance Assurance additional collateral to maintain or restore the Performance Assurance Amount. Should payment be due to Seller, Seller may request for a portion or all of the payments to be withheld, and if so requested, Buyer shall withhold such payments, to maintain such Performance Assurance Amount.

For avoidance of doubt, unless provided elsewhere, Seller's Performance Assurance once posted will be held by Buyer through the Delivery Term of the Designated System with the latest Delivery Term expiry date within a Product Order and the amount posted as Seller's Performance Assurance shall not be reduced unless Buyer draws on Seller's Performance Assurance pursuant to Section 6(d)(v)(1) or Section 6(e) of the Cover Sheet and Seller is required to post as Seller's Performance Assurance additional collateral, in which case the total amount to be maintained as Seller's Performance Assurance would be the Performance Assurance Amount calculated after such drawing based upon the Designated Systems then covered by this Agreement.

After the expiry of the Delivery Term of the Designated System with the latest Delivery Term expiry date within a Product Order, Seller may request for the reduction of a portion of the Performance Assurance Amount associated with such Product Order.

Any such request shall be honored by Buyer within ten (10) Business Days.

(b) Treatment of Performance Assurance in Connection with Interconnection Cost Estimates

Upon Seller's request, 75% of Performance Assurance associated with a Designated System will be refundable if, prior to the Energization of that Designated System, an Interconnection Customer (as defined in Section 466.30 of Title 83 of the Illinois Administrative Code) seeking to interconnect the Designated System receives from the interconnecting utility a non-binding estimate of costs to construct the interconnection facilities and any required distribution upgrades for that Designated System in an amount exceeding 30 cents per watt AC of the Designated System's Proposed Nameplate Capacity.

To obtain such refund, Seller's request must be made to Buyer and IPA within 14 days of having received the subject interconnection cost estimate and must be accompanied by a) documentation substantiating the cost estimate and b) a request to withdraw the Designated System from the REC Contract (or, in the case of a REC Contract featuring a single Designated System, a request to terminate the REC Contract). Upon the recognition of such request and substantiation of the interconnection cost estimate applicable to the Designated System, Buyer shall remove the Designated System and the RECs associated with such Designated System from this REC Contract and refund 75% of the Performance Assurance associated with that Designated System.

In all such cases, the remaining 25% of Performance Assurance associated with that Designated System would be permanently forfeited and could not be applied to a new SFA application for the Designated System.

Upon removal of the Designated System, the affected Product Order(s), including Schedule A to Exhibit A and Schedule C to Exhibit A, will be revised to account for the removal of that Designated System, with all required information to be provided

by IPA.”

Section 4.4 shall not apply.

Section 4.5 shall not apply.

- f. Sections 5.1(a), 5.1(c), and 5.1(f) of the Master Agreement shall be applicable to Seller only to the extent that they relate to failures or breaches that comprise the entirety of the Approved Vendor’s position and thus are not applicable to specific Designated System or Designated Systems.

The following changes are made to Article 5:

Subsection (b) of Section 5.1 is replaced in its entirety with the following:

“(b) the occurrence of non-Delivery of Product from all Designated Systems during the Term by Seller over a consecutive period of twelve (12) months unless excused by Force Majeure, which upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred. For such Event of Default, Buyer shall be entitled to payment by Seller of an amount for RECs that have not been Delivered. This payment, with respect to a Designated System, shall be based on the applicable Contract Price and on the difference between the number of RECs used to calculate payment and the number of RECs Delivered from such Designated System. Specifically, if payments have been made to Seller with respect to a Designated System, and the number of RECs Delivered from such Designated System is less than the result obtained by dividing the total payments made by Buyer to Seller for RECs from such Designated System by the Contract Price (the result of such division being the “Designated System Paid REC Quantity”), then with respect to each such Designated System, Seller shall return a portion of the amount of payment equal to the multiplicative product of (A) the Contract Price and (B) the positive difference between (i) the Designated System Paid REC Quantity and (ii) the number of RECs that has been Delivered from such Designated System;”

Subsection (c) of Section 5.1 is amended by adding the following prior to the semi-colon:

“unless the Potentially Defaulting Party demonstrates, within a twenty (20) Business Day period from the time of notice by and to the satisfaction of the Potentially Non-Defaulting Party in its sole discretion, that such Potential Event of Default has not occurred”

Subsection (e) of Section 5.1 is amended by deleting the phrase “creditworthiness and” and adding the following prior to the semi-colon:

“or the failure of the issuer of the Letter of Credit to maintain during the Term the credit rating required under the Letter of Credit as of the Date of Issuance (as that term is used in the Letter of Credit) provided that Seller does not post alternative Seller’s Performance Assurance in an amount equal to the required Performance Assurance Amount within thirty (30) Business Days of notice from Buyer”

Subsection (g) of Section 5.1 shall not apply and cross default is not applicable.

Subsection (h) of Section 5.1 shall not apply.

A new Subsection (i) is added to the end of Section 5.1.

“(i) failure of Seller to make payment to Buyer pursuant to Section 6(d)(v)(1) of the Cover Sheet, or failure of Seller to post Seller’s Performance Assurance in accordance with Section 4.3 of this Agreement or failure of Seller to comply with the reporting requirements set forth in Section 10(c) of the Cover Sheet, in which case, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred.”

Section 5.2 is replaced in its entirety with the following:

“Declaration of Early Termination Date and Calculation of Settlement Amounts. Except as otherwise set forth in the Cover Sheet, if an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the “Non-Defaulting Party”) will have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate the Transaction(s) under this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party such Terminated Transaction is commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).”

Section 5.3 is replaced in its entirety with the following:

“Net Out of Settlement Amounts. The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out (a) all amounts that are due to the Defaulting Party for Product that has been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any cash, security or other Performance Assurance then available to the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the “Termination Payment”). If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, there shall not be a Termination Payment and the Non-Defaulting Party shall not owe any amount to the Defaulting Party. The Termination Payment, if any, is due to the Non-Defaulting Party within twenty (20) Business Days following notice.”

Section 5.5 is amended by replacing “be” with “by” in the last line.

Section 5.7 is replaced in its entirety with the following:

“THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE DEEMED LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.”

- g. Article 6 is amended and restated to read in its entirety as follows:

**“ARTICLE 6: FORCE MAJEURE**

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, that upon such Party’s (the “Claiming Party”) giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, confirmed in writing, then the obligations of the Claiming Party will, to the extent it is affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be in breach hereof or liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure during such Suspension Period. The Party receiving such notice of Force Majeure will have until the end of the tenth (10th) Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of Force Majeure. If Seller is the Claiming Party, then such notification must be made to both the Buyer and the IPA, and a determination of whether to object to or dispute the existence of Force Majeure shall be made by Buyer, subject to the concurrence of the IPA (who, upon receipt, shall promptly confer to consider the Force Majeure notice).

“Force Majeure” means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the date such Transaction was entered into and which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of due diligence. Force Majeure includes acts of God (such as tornadoes, fires, earthquakes and floods), explosions, war, hostilities, riots and acts or threats of terrorism (any such event, an “External Event”) that disrupt the operation of the Designated System(s). Force Majeure may include delays in the establishment by the Designated System of an operating interconnection with the applicable distribution system as a result of the actions or inactions of the distribution provider, provided Seller can demonstrate to Buyer and to the IPA that such delay is not primarily attributable to Seller’s failure to make in a timely manner a formal request for interconnection to such distribution provider or to provide in a timely manner the information or payment required by such

distribution provider. Force Majeure may also include the failure or disruption in Deliveries of any Certification Authority that is not the Claiming Party. In the case of a Party's obligation to make payments hereunder, Force Majeure will only be an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

Force Majeure may also include curtailments of the Designated Systems (except economic curtailments as explicitly excluded pursuant to (iv) below) by either the interconnecting utility (including those through a smart inverter) or the Regional Transmission Organization ("RTO") responsible for the operation of the transmission system to which the Designated System(s) is interconnected that result in reduced REC production. In the event that Seller fails to so notify Buyer of such curtailment, Seller shall not be relieved of its Delivery obligations as a result of such curtailment. Upon the occurrence and proper notice of a curtailment, Seller shall estimate the amount of Deliveries prevented by such curtailment based on the most recent twelve (12) months of actual production data from the Designated System(s) and utilizing actual meteorological conditions during the period of curtailment and shall provide such estimate to Buyer along with all supporting documentation, including any supporting information from the interconnected utility or RTO that curtailed the applicable Designated System's generation. Force Majeure may not be based on: (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) Seller's ability to sell the Product to another at a price greater than the Purchase Price; (iv) curtailment for economic purposes only of the Designated System(s) if acting as a wholesale market participant, made by the interconnected utility or RTO responsible for the operation of the distribution or transmission system to which the Designated System(s) is interconnected; (v) insufficiency or unavailability of insolation to operate the Designated System(s) or generate sufficient quantities of Product; (vi) the performance or breakdown of equipment not directly caused by an External Event; or (vii) the loss of tax credits, the denial of deductions or the imposition of additional taxes.

If Force Majeure adversely affects the ability of Seller to deliver RECs from a Designated System, then there shall be a Suspension Period with respect to that Designated System's obligations to deliver RECs under this Agreement. If the Suspension Period arising from such event lasts for a consecutive period of seven hundred thirty (730) days, then the Designated System and the RECs associated with such Designated System shall be deemed removed from this Agreement. As soon as practicable after such occurrence, the IPA shall provide to Buyer and Seller a revised Schedule A (and Schedule B, if applicable) and Schedule C to the Product Order for such Designated System indicating the removal of such Designated System from the REC Contract, and if payments have been made to Seller with respect to the Designated System, Seller shall return the amount of payment based on the applicable Contract Price and on the difference between the number of RECs used to calculate payment and the number of RECs Delivered from such Designated System. This calculation shall be consistent with the calculation described in Section 5.1(b) of the Master REC Agreement."

- h. Article 7 is amended and restated to read in its entirety as follows:

**"ARTICLE 7: GOVERNMENT ACTION**

The Parties acknowledge that the Applicable Program, which among other things establishes the conditions for a market for certain Products, may be the subject of Government Action (including court challenge) that could adversely affect the eligibility of a Product to meet the

requirements of an Applicable Program or otherwise alter the requirements of the Applicable Program, or make a Product unavailable or dramatically diminished or increased in value. With respect to the Transaction(s), if Seller represents that a Product complies with an Applicable Program, such representation is made and effective as of the Trade Date, and regardless of any Government Action occurring after the Trade Date, Seller must Deliver Product that complies with the Applicable Program as of each Delivery Date. Government Action that changes in any respect the value of a Product (without rendering the Product out of compliance with the Applicable Program if Regulatorily Continuing), will have no effect on the obligation of the Parties to purchase and sell such Product at the price and on the terms set forth in the Cover Sheet. To the extent that Government Action (i) renders Delivery illegal under Applicable Law or (ii) renders the Product ineligible to comply with the Applicable Program in such a manner that no modification to the Product or action taken by Seller would allow the Product to comply with the Applicable Program, (a) such Transaction will be terminated, (b) Seller's Performance Assurance shall be returned, (c) that portion of whatever has been paid for Products not yet Delivered will be refunded by Seller, to the extent it is lawful to do so, and (d) neither Seller nor Buyer will have any liability to the other after such termination. Notwithstanding the foregoing, no Transaction will be affected, cancelled, or otherwise impaired by Government Action that is specific to a Party under Applicable Law taken by a Governmental Authority alleging that Party's violation thereof."

- i. Governing Law (Article 8) is the law of the State of Illinois.
- j. The following changes are made to Article 9:

Section 9.1 shall not apply.

Section 9.2 is replaced in its entirety with the following:

"9.2 Assignment.

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment or other transfer of this Agreement by either Party shall operate to release the assignor or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns), except where otherwise provided for below, expressly releases the assignor or transferor from its obligations thereunder, provided that such release shall not be unreasonably withheld or delayed.

Buyer may not assign Buyer's rights and obligations under this Agreement without the prior written consent of the Seller, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Buyer may, without the consent of Seller, (i) transfer or assign this Agreement to an Affiliate of Buyer which is creditworthy on the date of assignment, or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Buyer.

Seller may not assign Seller's rights and obligations under this Agreement without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such assignment (i) shall be a minimum of one or more Product Orders in their entirety and (ii) may be made no earlier than the greater of a) thirty (30) Business Days after the Trade Date of the applicable Product Order(s), or b) the point in time at which the Collateral Requirement associated with all Designated Systems in Seller's Product Orders proposed for Assignment has been received by Buyer (excluding collateral

assignment, as described below); and provided further, that Seller may, without the consent of Buyer, transfer or assign this Agreement or a Product Order to an entity already registered with the IPA as an Approved Vendor having a valid REC Contract with Buyer through the SFA. In the case of an assignment made by Seller without the consent of Buyer, Seller must notify the IPA and Buyer of any such assignment, and provide Buyer with all pertinent contact and payment information with respect to the assignee.

Seller may also, without the consent of Buyer, collaterally assign this Agreement or collaterally assign or pledge the accounts, revenues or proceeds with respect to this Agreement or applicable Product Order(s), in connection with any financing or other financial arrangements with respect to Designated System(s) under this Agreement (and without relieving itself from liability hereunder). In the case of such collateral assignment or pledge, Seller must notify: the IPA and Buyer of any such collateral assignment, including providing Buyer with the identity and contact information of the financing party obtaining collateral rights in connection with this Agreement.

As required by the SFA, Seller's rights and obligations under the Agreement may only be directly assigned or transferred to Approved Vendors. However, if the assignee is a financing party who has become a transferee as a result of a foreclosure on collateral (including this Agreement) pledged or collaterally assigned as described above, the requirement that such assignee be approved by the IPA as an Approved Vendor shall be postponed for up to one hundred eighty (180) days following the effectiveness of such foreclosure and related transfer. Failure of such assignee to become an Approved Vendor or to assign this Agreement to an Approved Vendor within such one hundred eighty (180) day period shall constitute an Event of Default for the Agreement between Buyer and the assignee.

In the event of a direct assignment by Seller permitted by this Agreement, any Performance Assurance posted in the form of cash may constitute the Performance Assurance applicable to the assignee for the transferred Product Order(s) and will continue to be held by Buyer; alternatively, Seller's Performance Assurance with respect to the Designated Systems in the transferred Product Order(s) may be refunded upon request if and when the assignee posts replacement Performance Assurance. In the case of Performance Assurance in the form of a Letter of Credit, Seller's original Performance Assurance shall remain in place with respect to the transferred Product Order(s) until the assignee posts replacement Performance Assurance consistent with Section 4.3 of this Agreement.

In the event that the assignee is (a) an Approved Vendor and (b) already a counterparty under a separate SFA REC Contract with Buyer, then any Product Order(s) so transferred will constitute Product Order(s) under such assignee's existing REC Contract under the SFA with Buyer, with the portion of the Performance Assurance Amount applicable to such assignee's assigned Product Orders calculated based on the Performance Assurance Amount applicable to such assignee's entire portfolio of Product Orders and the Performance Assurance Amount that has already been posted under such assignee's existing REC Contract under the SFA with Buyer.

For avoidance of doubt, in the event of a direct assignment by Seller, Surplus RECs shall remain associated with the Master Agreement that included the Designated Systems having produced such Surplus RECs; provided, that if Seller is transferring this Agreement in its entirety (with all remaining Product Orders thereunder), then in

such instance the Surplus RECs would also transfer and such assignee would assume such Surplus REC Account(s) with respect to such Designated System(s).

Following a direct assignment under this Agreement, the affected Product Order(s), including Exhibit A, Schedule A to Exhibit A, Schedule B to Exhibit A (if applicable), and Schedule C to Exhibit A, will be amended to account for the assignment with respect to the assignor, with all required information to be provided by IPA. In addition, following the direct assignment, new or amended Product Order(s) will be generated with respect to the assignee, with all required information to be provided by IPA.

This Agreement will bind each Party's successors and permitted assigns. Any attempted assignment in violation of this provision will be void *ab initio*."

Subsection (h) of Section 9.5 is amended by adding the following sentence to the end thereof:

"Delivery of an executed counterpart of a signature page to the REC Contract by electronic means shall be effective as delivery of a manually executed counterpart of the REC Contract. Electronic copies of executed original copies of the REC Contract shall be sufficient and admissible evidence of the content and existence of the REC Contract to the same extent as the originally executed copy or copies (if executed in counterpart)."

Confidentiality is applicable and Section 9.7 shall apply. Section 9.7 is amended by inserting "prospective lenders, prospective purchasers, investors, prospective investors" after "lenders" in the third line and adding the following to the end thereof:

"If a Party is required or requested to disclose any confidential information as provided in (a) or (c) above, the disclosing Party shall provide the other Party with written notice within five (5) Business Day so that the other Party may seek on its own behalf a protective order or any other appropriate remedy. If such protective order or other remedy is not obtained, the disclosing Party will cooperate with the other Party's counsel to enable such Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the confidential information. The Parties shall maintain the confidentiality of the terms of the Transaction(s) hereunder in compliance with Section 16-111.5(h) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(h)). All confidentiality obligations set forth herein shall survive following the expiration or termination of this Agreement, provided, however, that with respect to any confidential information that constitutes a "trade secret" under applicable law, these covenants shall apply for the life of the trade secret."

For Dispute Resolution, in Section 9.8 Waiver of Jury Trial is applicable and Binding Arbitration is applicable with the arbitration taking place in Chicago, Illinois. Section 9.8, Non-Binding Mediation, shall not apply. Section 9.8, Binding Arbitration, Section 1(F) (Baseball Arbitration) shall not apply.

A new section is added to the end of Article 9 as follows:

"9.9 Waiver of Immunities. To the extent either Party possesses any immunity on the grounds of sovereignty or other similar grounds, each Party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the



grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any suit, action or proceedings relating hereto in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Applicable Law, that it will not claim any such immunity in any suit, action or proceedings relating hereto.”

- k. Exhibits A through D and the Guidance Notes attached to the end of the Master REC Agreement shall not apply.

*[Remainder of Page Intentionally Left Blank – Signature Page Follows]*

Posted: May 14, 2019

IN WITNESS WHEREOF, the Parties have caused this REC Contract to be executed as of the date first written above.

\_\_\_\_\_

(“Party A” or “Seller”)

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

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

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

\_\_\_\_\_

(“Party B” or “Buyer”)

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

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

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

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

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

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

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

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

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

## **List of Exhibits**

Exhibit A – Form of Product Order

Exhibit B – Bi-Annual System Status Form

Exhibit C – Community Solar First Year Report

Exhibit D – REC Annual Report

Exhibit E – Form of Letters of Credit

Exhibit F – Delivery Schedule Example

Exhibit G – Surplus RECs and Drawdown Payments Example

Exhibit H – Community Solar First Year Payment Adjustment Example

Exhibit I – Community Renewable Energy Generation Project Subscription  
Information Access Authorization

Exhibit J – Master REC Purchase and Sale Agreement

Exhibit K – Illinois State Requirements

Exhibit K.1 - Standard Terms and Conditions

Exhibit K.2 - Standard Certifications

Exhibit K.3 - Financial Disclosure and Conflicts of Interest

Exhibit K.4 - Disclosure of Business with Iran

Exhibit K.5 - Taxpayer Identification Number

## EXHIBIT A

### Form of Product Order

(One Product Order to be completed for each Batch of Designated Systems approved by the ICC)

Contract Number: \_\_\_\_\_  
REC Contract Effective Date: \_\_\_\_\_  
Trade Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_  
Approved Vendor ID: \_\_\_\_\_

Subprogram and Batch ID: \_\_\_\_\_  
Application ID: \_\_\_\_\_

#### Designated Systems included in Batch

Designated System ID	Proposed Nameplate Capacity	Collateral Requirement
	kW	\$
	kW	\$
	kW	\$
	kW	\$
	kW	\$
	kW	\$
	kW	\$

Batch sum of Proposed Nameplate Capacity = \_\_\_\_\_ kW

Initial Performance Assurance Amount = sum of Collateral Requirement  
= \$ \_\_\_\_\_

Total value of Product Order at Trade Date = \$ \_\_\_\_\_

(Seller's Performance Assurance is due to Buyer within 30 Business Days of Trade Date).

\_\_\_\_\_  
("Party A" or "Seller")

\_\_\_\_\_  
("Party B" or "Buyer")

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

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

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

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

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

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

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

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

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

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

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

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

**Schedule A to Exhibit A**

*(One Schedule A form to be completed for each Designated System on Trade Date)*

Date of Schedule A Creation or Update: \_\_\_\_\_

(a) Designated System ID: \_\_\_\_\_

(b) System Address: \_\_\_\_\_

(c) Group, Category, Block: \_\_\_\_\_

(d) Class of Resource:

Distributed Renewable Energy Generation Device

Community Renewable Energy Generation Project

(e) Scheduled Energized Date: \_\_\_\_\_

(f) Proposed Price = \$\_\_\_\_\_/REC (this shall be the SFA price if Designated System is a Community Renewable Energy Generation Projects)

ABP Price: \$\_\_\_\_\_/REC (for Community Renewable Energy Generation Projects)

(g) Capacity Factor: \_\_\_\_\_%

(h) Proposed Nameplate Capacity: \_\_\_\_\_kW (AC Rating)

(i) Designated System Expected Maximum REC Quantity = \_\_\_\_\_RECs

(j) Collateral Requirement

= 5% x Proposed Price x Designated System Expected Maximum REC Quantity

= \$\_\_\_\_\_

If applicable to Community Renewable Energy Generation Project:

(i) Anchor Tenant: \_\_\_\_\_

(ii) % Share to be subscribed by Anchor Tenant: \_\_\_\_\_

(iii) 100% Low-Income Subscriber Owned Project Claim: [Y/N]

(iv) % Small Subscriber (Intended): \_\_\_\_\_

**TO BE USED IN CASE OF SYSTEM REMOVAL**

Date of removal from REC Contract: \_\_\_\_\_

Basis for removal from REC Contract (including authorizing Section of REC Contract): \_\_\_\_\_

Disposition of Collateral Requirement upon removal: \_\_\_\_\_

**Schedule B to Exhibit A**

*(One Schedule B form to be completed for each Designated System on Date of Energization)*

Date of Schedule B Creation or Update: \_\_\_\_\_

(a) Designated System ID:

(b) Tracking System:

PJM-EIS GATS

M-RETS ID:

(c) System Address: \_\_\_\_\_

(d) Group, Category, Block: \_\_\_\_\_

(e) Class of Resource:

Distributed Renewable Energy Generation Device

Community Renewable Energy Generation Project

(f) Date of Final Interconnection Approval: \_\_\_\_\_

(g) Date of Energization: \_\_\_\_\_

(h) Contract Price = \$\_\_\_\_\_/REC

Anchor Tenant Price: \$\_\_\_\_\_/REC (for Community Renewable Energy Generation Projects)

Non-Anchor Tenant Contract Price: \$\_\_\_\_\_/REC (for Community Renewable Energy Generation Projects)

(i) Capacity Factor: \_\_\_\_\_%

(j) Actual Nameplate Capacity: \_\_\_\_\_kW (AC Rating)

(k) Contract Nameplate Capacity: \_\_\_\_\_kW (AC Rating)

(l) Designated System Contract Maximum REC Quantity = \_\_\_\_\_RECs

(m) REC Purchase Payment Amount = Contract Price x Designated System Contract Maximum REC Quantity.

(n) Collateral Requirement

= 5% x Contract Price x Designated System Contract Maximum REC Quantity

= \$\_\_\_\_\_

If applicable to Community Renewable Energy Generation Project:

- (i) Anchor Tenant: \_\_\_\_\_ date: \_\_\_\_\_
- (ii) % Share subscribed by Anchor Tenant: \_\_\_\_\_ date: \_\_\_\_\_
- (iii) 100% Low-Income Subscriber Owned Project achieved: [Y/N] date: \_\_\_\_\_
- (iv) % Small Subscriber: \_\_\_\_\_ date: \_\_\_\_\_

**TO BE USED IN CASE OF SYSTEM REMOVAL**

Date of removal from REC Contract: \_\_\_\_\_

Basis for removal from REC Contract (including authorizing Section of REC Contract): \_\_\_\_\_

Disposition of Collateral Requirement upon removal: \_\_\_\_\_

**Delivery Schedule**

[to be inserted.]

*(See Exhibit F for an example of a delivery schedule)*



**Schedule C to Exhibit A**

*(To be updated by the IPA upon a size change or removal of a Designated System)*

Batch ID: \_\_\_\_\_

Application ID: \_\_\_\_\_

REC Contract Effective Date: \_\_\_\_\_

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

Schedule C Update Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Approved Vendor ID: \_\_\_\_\_

**Updated Designated Systems included in Batch**

Designated System ID	Proposed Nameplate Capacity	Actual Nameplate Capacity (if different)
	kW	kW
	kW	kW
	kW	kW
	kW	kW
	kW	kW
	kW	kW
	kW	kW

## EXHIBIT B

### Bi-Annual System Status Form

*(With respect to each Designated System that is under development, but not yet Energized, Seller must provide the information required in this Bi-Annual System Status Form. Seller shall submit the Bi-Annual System Status Form to Buyer and the IPA every 6 months after the Trade Date indicated in the applicable Product Order that includes the Designated System in accordance with Section 10(a) of the REC Contract.)*

REC Contract Effective Date: \_\_\_\_\_

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

Date of Bi-Annual System Status Form: \_\_\_\_\_

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Approved Vendor ID: \_\_\_\_\_

Subprogram and Batch ID: \_\_\_\_\_

Application ID: \_\_\_\_\_

	Item	Information
1	Designated System ID	
2	Project Name	
3	Proposed Nameplate Capacity	
4	Capacity Factor (%)	
5	Project Status	[not yet under construction, under construction and X% complete, complete awaiting inspections or interconnection approvals]  Details of Project Status:
6	Extension Requested	[Y/N] Date of Request: Reason: [interconnection delay, permitting delay, etc.]  Status of Extension: [Granted/Denied/Pending] Length of Extension:  Additional Information (Optional):
7	Requests to change REC obligation (may enter multiple)	Type (suspension, reduction, elimination, Force Majeure) Date of Request: Status of Request:

**Notes:**

1. This will be filled out on the illinoisSFA.com site and Approved Vendors will be prompted to complete the report every 6 months until Part II of the project application is complete.
2. System information will be prefilled.
3. Community Renewable Energy Generation Projects will have additional subscriber reporting requirements contained in Exhibit C.

## EXHIBIT C

### Community Solar First Year Report

*(With respect to each Community Renewable Energy Generation Project that has been Energized, Seller shall submit the Community Solar First Year Report at the conclusion of four (4) full Quarterly Periods after the date of Energization in accordance with Section 10(b) of the REC Contract).*

REC Contract Effective Date: \_\_\_\_\_

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

Date of Community Solar First Year Report: \_\_\_\_\_

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Approved Vendor ID: \_\_\_\_\_

Batch ID: \_\_\_\_\_

Application ID: \_\_\_\_\_

	Item	Information
1	Designated System ID	
2	Project Name	
3	PJM-EIS GATS or M-RETS ID	
4	Actual Nameplate Capacity	
5	Contract Nameplate Capacity	
6	Capacity Factor (%)	
7	REC deliveries since last report (or since Energization if first report)	
	Date of first REC delivery	
	RECs contracted	
	RECs Delivered	
8	Associated Collateral Requirement held by Buyer	
9	Requests to change REC obligation (may enter multiple)	Type (suspension, reduction, elimination, Force Majeure) Date of Request: Status of Request: [Granted, Denied, Pending]
10	Consumer complaints received	
11	100% Low-Income Subscriber Owned Project status (Certify Y/N, if applicable)	

**Subscriber Information**

<b>Customer account number<sup>6</sup></b>	<b>Subscription Size (kW)</b>	<b>End Use Customer (Y/N)</b>	<b>Subscription Start Date</b>	<b>Subscription End Date (if applicable)</b>
Anchor Tenant if applicable: _____				

**Example**

Customer account number	Subscription Size (kW)	End Use Customer (Y/N)	Subscription Start Date	Subscription End Date (if subscription has ended)
Anchor Tenant: 343323553	55	N	6/1/2019	
598398998	5	Y	7/1/2019	11/1/2019
34005030	12	Y	4/1/2019	

Note: The Community Solar First Year Report submitted is to be included with the REC Annual Report as applicable.

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<sup>6</sup> All Parties, and the IPA, shall afford confidential treatment to customer account numbers transmitted or received under this REC Contract.

## EXHIBIT D

### REC Annual Report

*(Seller shall submit a REC Annual Report to Buyer and the IPA no later than July 15 each year following the conclusion of the immediately preceding Delivery Year ending on May 31 in accordance with Section 10(c) of the REC Contract.)*

*(The REC Annual Report must contain information for each Designated System)*

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Approved Vendor ID: \_\_\_\_\_

Subprogram and Batch ID: \_\_\_\_\_

Application ID: \_\_\_\_\_

Date of REC Annual Report: \_\_\_\_\_

Delivery Year: \_\_\_\_\_

	Item	Information (fill in N/A if not applicable).
1	Designated System ID	
2	Project Name	
3	Project Status	[not yet under construction; under construction and X% complete; complete awaiting inspections or interconnection approvals]  Details of Project Status:
4	Proposed Nameplate Capacity	(if not yet Energized)
4	Actual Nameplate Capacity	(if Energized)
4	Contract Nameplate Capacity	(if Energized)
5	Capacity Factor (%)	
6	PJM-EIS GATS or M-RETS ID	(if Energized)
7	REC deliveries since last report (or since Energization if first report)	
	Date of first REC delivery	
	RECs contracted	
	RECs Delivered	
8	Extension Requested	[Y/N] Date of Request: Reason: [interconnection delay, permitting delay, etc.]  Status of Extension: [Granted/Denied/Pending] Length of Extension:  Additional Information (Optional):
9	Associated Collateral Requirement held by Buyer	
10	Requests to change REC obligation (may enter multiple)	Type (suspension, reduction, elimination, Force Majeure) Date of Request: Status of Request: [Granted, Denied, Pending]

11	Consumer complaints received	

**Notes:**

1. This will be filled out on the illinoisSFA.com website using a customer annual report portal.
2. System information will be prefilled.
3. Production data can be automatically filled by uploading the “my generation” .csv from GATS or equivalent from M-RETS.
4. Community Renewable Energy Generation Projects will have additional ongoing subscriber reporting requirements in each REC Annual Report, including all the data fields contained in Exhibit C.

## EXHIBIT E

### OPTION 1

IRREVOCABLE STANDBY LETTER OF CREDIT FORM  
DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, \_\_\_\_\_ (the "Issuing Bank"), hereby establish our Irrevocable Transferable Standby Letter of Credit (the "Letter of Credit") in favor of \_\_\_\_\_ (you, the "Beneficiary") for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank's location for presentments] on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by an Authorized Officer of the Beneficiary:

1. "An Event of Default (as defined in the Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]";
2. "An Early Termination Date (as defined in the Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]";
3. "The expiration date of your Letter of Credit is less than twenty (20) days from the date of this statement, and Account Party under such Letter of Credit is required, but has failed, to provide a replacement letter of credit or other collateral beyond such expiration date in accordance with, and to assure performance of, its obligations under the Renewable Energy Credit Agreement between Account Party and the Beneficiary of the Letter of Credit (as the same may be amended, the "REC Contract"). No event of default has occurred and is continuing under the REC Contract with respect to the Beneficiary. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]"; or
4. "An event permitting a Drawdown Payment (as defined in the Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and such Drawdown Payment has not been received by Beneficiary within the time period prescribed in the REC Contract. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]".

This Letter of Credit shall expire on \_\_\_\_\_. It is a condition of this Letter of Credit that it will be automatically extended for one year periods (to the immediately following anniversary of its then current expiration date) following its then current expiration date, unless at least sixty (60) days before its then current expiration date, we notify you, by facsimile transmission to \_\_\_\_\_ Attn: \_\_\_\_\_ that we do not intend to extend this Letter of Credit; provided that the original notice shall be

simultaneously forwarded by overnight courier service to you at the above address; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the notice.

Partial drawings are permitted hereunder and multiple presentations are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements above, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honored upon presentation as specified. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600, or any successor publication thereto (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b), 16(d) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 14(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) Business Days, following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and shall inform the Beneficiary accordingly. With respect to Article 16(d) of the UCP, the notice required in sub-article 16C must be given no later than the banks' close of business on the third Business Day following the date of presentation.

Article 36 of the UCP as it applies to this Irrevocable Standby Letter of Credit is hereby modified to provide that in the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business. Article 36 of the UCP as it applies to this Irrevocable Standby Letter of Credit is hereby further modified to provide that any alternate place for presentation that we designate must be located in the United States.

We, the Issuing Bank, hereby certify that we are a chartered bank in \_\_\_\_\_ [name of state], that we are an FDIC insured bank, and that we currently exceed all regulatory capital ratios.

As used herein, the term "Business Day" means any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system and the term "Authorized Officer" means President, Treasurer, any Vice President or any Assistant Treasurer.

This Letter of Credit is transferable in whole but not in part, in accordance with the procedures in UCP 600 through the submission of a Letter of Full Transfer utilizing one of the attached forms of Letter of Full Transfer (Schedules 1-3), accompanied by the original Letter of Credit and original amendments, if any, but otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank and the Account Party.

This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. Foreign Assets Control Regulations or other applicable U.S. Laws and Regulations.



Posted: May 14, 2019

We will not make any payment under this Letter of Credit (1) to any entity or person who is subject to the sanctions issued by the United States Department of Commerce, or to whom payment is prohibited by the foreign asset control regulations of the United States Department of the Treasury, or (2) which otherwise is in contravention of United States laws and regulations.

[The Issuing Bank may add specific contact or additional information or administrative- only comments at this point. However, such comments shall not create or alter any rights that vary from the above language].

[BANK SIGNATURE]

**OPTION 2**

IRREVOCABLE STANDBY LETTER OF CREDIT FORM

DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, \_\_\_\_\_ (the "Issuing Bank"), hereby establish our Irrevocable Transferable Standby Letter of Credit (the "Letter of Credit") in favor of \_\_\_\_\_ (you, the "Beneficiary") for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$\_\_\_\_), available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank's location for presentments] on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by an Authorized Officer of the Beneficiary:

1. "An Event of Default (as defined in the Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]";
2. "An Early Termination Date (as defined in the Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]";
3. "The expiration date of your Letter of Credit is less than twenty (20) days from the date of this statement, and the Account Party under such Letter of Credit is required, but has failed, to provide a replacement letter of credit or other collateral beyond such expiration date in accordance with, and to assure performance of, its obligations under the Renewable Energy Credit Agreement between Account Party and the Beneficiary of the Letter of Credit (as the same may be amended, the "REC Contract"). No event of default has occurred and is continuing under the REC Contract with respect to the Beneficiary. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]"; or
4. "An event permitting a Drawdown Payment (as defined in the Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and such Drawdown Payment has not been received by Beneficiary within the time period prescribed in the REC Contract. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]".

This Letter of Credit shall expire on \_\_\_\_\_. It is a condition of this Letter of Credit that it will be automatically extended for one year periods (to the immediately following anniversary of its then current expiration date) following its then current expiration date, unless at least sixty (60) days before its then current expiration date, we notify you, by facsimile transmission to \_\_\_\_\_ Attn: \_\_\_\_\_ that we do not intend to extend this Letter of Credit; provided that the original notice shall be simultaneously forwarded by overnight courier service to you at the above address; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the notice.

Partial drawings are permitted hereunder and multiple presentations are permitted hereunder. The amount

available for drawing by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements above, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honored upon presentation as specified. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

This Letter of Credit is subject to International Standby Practices (ISP98), International Chamber of Commerce (“ICC”) Publication No. 590, or any successor publication thereto. This Standby Letter of Credit shall be deemed to be made under the laws of the State of New York, including Article 5 of the Uniform Commercial Code, and shall, as to matters not governed by the International Standby Practices (ISP98), be governed by and construed in accordance with the laws of the State of New York, excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction.

Rule 3.14(a) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation reopens for business.

Rule 3.14(b) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby further modified to provide that any alternate place for presentation that we designate must be located in the United States.

We, the Issuing Bank, hereby certify that we are a chartered bank in \_\_\_\_\_ [name of state], that we are an FDIC insured bank, and that we currently exceed all regulatory capital ratios.

As used herein, the term “Business Day” means any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system and the term “Authorized Officer” means President, Treasurer, any Vice President or any Assistant Treasurer.

This Letter of Credit, except as expressly stated herein, is transferable in whole but not in part in accordance with the ICC Publication No. 590. Any transfer request must be presented to us utilizing one of the attached forms of Letter of Full Transfer (Schedules 1-3) together with the original Letter of Credit and original amendments, if any. Transfers to designated foreign nationals and/or specially designated nationals are not permitted as being contrary to the U.S. Treasury Department or foreign assets control regulations.

Except for the transfer, this letter of credit otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank, and the Account Party.

We will not make any payment under this Letter of Credit (1) to any entity or person who is subject to the sanctions issued by the United States Department of Commerce, or to whom payment is prohibited by the foreign asset control regulations of the United States Department of the Treasury, or (2) which otherwise is in contravention of United States laws and regulations.

[The Issuing Bank may add specific contact or additional information or administrative-only comments at this point. However, such comments shall not create or alter any rights that vary from the above language].

[BANK SIGNATURE]

**Schedule 1 to Exhibit E**

**LETTER OF FULL TRANSFER**

\_\_\_\_\_, 20\_\_\_\_

To:  
Bank Address

Ladies/Gentlemen:

RE: Credit Issued By \_\_\_\_\_

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and original amendments, if any, are returned herewith, and we ask you to endorse the Letter of Credit and amendments on the reverse thereof, and forward these direct to the transferee with your customary notice of transfer.

Enclosed is remittance of \$\_\_\_\_\_ in payment of your transfer commission and in addition thereto we agree to pay to you on demand any expenses which may be incurred by you in connection with this transfer.

Transfer Commission Charges

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

SIGNATURE AUTHENTICATED

Yours very truly,

The signatory/ies of this concern is/are authorized to withdraw corporate funds.

\_\_\_\_\_  
(BANK)

\_\_\_\_\_  
Signature of Beneficiary

\_\_\_\_\_  
(Authorized Signature)

SIGNATURE AUTHENTICATED

The signatory/ies of this concern is/are authorized to withdraw corporate funds.

\_\_\_\_\_  
(BANK)

\_\_\_\_\_  
Signature of Transferee

\_\_\_\_\_  
(Authorized Signature)

**Schedule 2 to Exhibit E**

**LETTER OF FULL TRANSFER**

Request for a Full Transfer of the below  
referenced Standby Letter of Credit

[Name of the Issuing Bank]

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

Reference: \_\_\_\_\_

(Issuing Bank's Letter of Credit Number

To: \_\_\_\_\_

(Advising Bank's Reference Number, if applicable)

"Transferring Bank"

We, the undersigned "First Beneficiary", hereby irrevocably transfer all of our rights to draw under the above referenced Letter of Credit ("Credit") in its entirety to:

\_\_\_\_\_  
(Print Name and complete address of the Transferee) "Second Beneficiary"

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

Advise through:

\_\_\_\_\_  
(Print Name/address of the Second Beneficiary's Bank, if known—  
if left blank, the Transferring Bank will select the advising bank)

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

In accordance with UCP 600 Article 38 or ISP 98, Rule 6 regarding transfer of drawing rights (whichever set of rules the Credit is subject to), all rights of the undersigned First Beneficiary in such Credit are transferred to the Second Beneficiary. The Second Beneficiary shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the Second Beneficiary without necessity of any consent of or notice to the undersigned First Beneficiary.

The original Credit, including amendments to this date, is attached and the undersigned First Beneficiary requests that you endorse an acknowledgment of this transfer on the reverse thereof. The undersigned First Beneficiary requests that you notify the Second Beneficiary of this Credit in such form and manner as you deem appropriate, and the terms and conditions of the Credit as transferred.

Enclosed is remittance of \$[\_\_\_\_\_] in payment of your transfer commission and in addition thereto we agree to pay to you on demand any expenses which may be incurred by you in connection with this transfer.

Transfer Commission Charges

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First Beneficiary represents and warrants to Transferring Bank that (i) our execution, delivery, and performance of this request to Transfer (a) are within our powers and have been duly authorized (b) constitute our legal, valid, binding and enforceable obligation (c) do not contravene any charter provision, by-law, resolution, contract, or other undertaking binding on or affecting us or any of our properties and (d) do not require any notice, filing or other action to, with, or by any governmental authority (ii) we have not presented any demand or request for payment or transfer under the Credit affecting the rights to be transferred, and (iii) the Second Beneficiary's name and address are correct and complete and the transactions underlying the Credit and the requested Transfer do not violate applicable United States or other law, rule or regulation, including without limitation U.S. Foreign Asset Control regulations.

In the event that we fail to remit to you, following your written demand, any funds paid to us despite the Transfer, we agree to reimburse you for your reasonable costs of collecting those funds from us.

The Effective Date shall be the date hereafter on which Transferring Bank effects the requested transfer by acknowledging this request and giving notice thereof to Second Beneficiary.

WE WAIVE ANY RIGHT TO TRIAL BY JURY THAT WE MAY HAVE IN ANY ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS TRANSFER.

Sincerely Yours

---

(Print Name of First Beneficiary)

---

(Print Authorized Signers Name and Title)

---

(Authorized Signature)

---

(Print Second Authorized Signers Name and Title, if required)

---

(Second Authorized Signature, if required)

---

(Telephone Number/Fax Number)

SIGNATURE GUARANTEED Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement

---

(Print Name of Bank)

---

(Address of Bank)

---

(City, State, Zip Code)

---

(Print Name and Title of Authorized Signer)

---

(Authorized Signature)

---

(Telephone Number)

---

(Date)



**Schedule 3 to Exhibit E**

**LETTER OF FULL TRANSFER**

\_\_\_\_\_, 201\_\_

[TRANSFEROR]

Re: Irrevocable Standby Letter of Credit No. \_\_\_\_\_

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to the Transferee, named below:

Name of Transferee

Address

By this transfer all our rights as the transferor, including all rights to make drawings under the Letter of Credit, go to the transferee. The transferee shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the transferee without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the transferee with your customary notice of transfer.

The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form. The authorization of the Beneficiary's signature and title on this form also acts to certify that the authorizing financial institution (i) is regulated by a U.S. federal banking agency; (ii) has implemented anti-money laundering policies and procedures that comply with applicable requirements of law, including a Customer Identification Program (CIP) in accordance with Section 326 of the USA PATRIOT Act; (iii) has approved the Beneficiary under its anti-money laundering compliance program; and (iv) acknowledges that [the Transferor] is relying on the foregoing certifications pursuant to 31 C.F.R. Section 103.121 (b)(6)."

NAME OF BANK

---

AUTHORIZED SIGNATURE AND TITLE

PHONE NUMBER

NAME OF TRANSFEROR

NAME OF AUTHORIZED SIGNER AND  
TITLE

AUTHORIZED SIGNATURE

## EXHIBIT F

### Delivery Schedule Example

Date of Energization	February 1, 2020
Contract Nameplate Capacity	1.000 MW
System Type	Fixed-mount System
Capacity Factor	16.42 %
Annual Degradation Factor	0.5%

Delivery Year	Delivery Year Expected REC Quantity (RECs)
2019-2020	1,489
2020-2021	1,481
2021-2022	1,474
2022-2023	1,467
2023-2024	1,459
2024-2025	1,452
2025-2026	1,445
2026-2027	1,437
2027-2028	1,430
2028-2029	1,423
2029-2030	1,416
2030-2031	1,409
2031-2032	1,402
2032-2033	1,395
2033-2034	1,388
Subsequent Delivery Years	99.5% of the Delivery Year Expected REC Quantity calculated for the prior Delivery Year, rounded down

Designated System Contract Maximum REC Quantity  
 = 1 MW x 16.42% x 8,760 hours x 15 years (rounded down)  
 = 21,575 RECs

Notes:

- For avoidance of doubt, the delivery schedule shall be calculated at the time of Energization and not at the time of the start of the Delivery Term.
- The first Delivery Year shall be the Delivery Year for which the Energization occurred. For example, if the Designated System is Energized on February 1, 2020, then the first Delivery Year shall be for the period starting June 1, 2019 through May 31, 2020.
- If the Delivery Term for a Designated System extends beyond the Delivery Years for which a Delivery Year Expected REC Quantity is provided above, then each subsequent Delivery Year Expected REC Quantity shall be 99.5% of the prior Delivery Year Expected REC Quantity for such Designated System.
- The Designated System Contract Maximum REC Quantity may be updated pursuant to Sections 5(f)(i)-(iii) or 6(f) of the Cover Sheet using a revised Contract Nameplate Capacity, and such revised Contract Nameplate Capacity shall be deemed to have prevailed at the time of Energization for purposes of calculating the Delivery Year Expected REC Quantities. Any updates to the Delivery Year Expected REC Quantities shall not excuse any drawdowns that have occurred prior to the update.

## EXHIBIT G

### Surplus RECs and Drawdown Payments Example

*(All Prices and Quantities are Illustrative only)*

Once annually on or prior to November 15 following a Delivery Year (but only once three full Delivery Years have occurred after the start of a Delivery Term), the IPA shall review the performance of the REC deliveries made during such Delivery Year and determine the amount of payment due.

The calculations made annually are performed on a portfolio basis for all Designated Systems included in this REC Contract across all Product Orders.

The example provided below is for illustrative purposes only and has been simplified to facilitate the understanding of the calculations made.

**Delivery Year for which calculation is performed:** June 1, 2023 through May 31, 2024

#### Step 1: Calculate the Delivery Year REC Performance

Designated System ID	Delivery Year 2021-2022	Delivery Year 2022-2023	Delivery Year 2023-2024	Delivery Year REC Performance
1000	135	133	128	132 RECs
1001	158	155	152	155 RECs
1002	190	188	186	188 RECs
1003	251	220	246	239 RECs

(1) For Delivery Year 2023-2024, the Delivery Year REC Performance is the 3-year rolling average of actual deliveries that occurred during the period June 1, 2021 through May 31, 2024.

#### Step 2: Determine whether a Designated System is underperforming or outperforming

Designated System ID	Contract Price (\$/REC)	Delivery Year Expected REC Quantity	Delivery Year REC Performance	Surplus REC / (Delivery Year Shortfall Amount)
1000	73.23	135 RECs	132 RECs	(3)
1001	65.61	160 RECs	155 RECs	(5)
1002	55.55	186 RECs	188 RECs	2
1003	48.07	245 RECs	239 RECs	(6)

(1) The Delivery Year REC Performance is calculated from Step 1.

(2) The Delivery Year Expected REC Quantity for a Designated System and a Delivery Year is provided in the Schedule B to the Product Order applicable to such Designated System.

(3) If the Delivery Year REC Performance is less than the Delivery Year Expected REC Quantity, the difference in the number of RECs shall be the “Delivery Year Shortfall Amount”.

**Step 3: Calculate total amount of Surplus RECs in the Surplus REC Account**

Balance of Surplus RECs in Surplus REC Account (at beginning of period) = 7 RECs

Add number of Surplus RECs from Step 2 above = 2 REC (from Designated System #1002)

Total Surplus RECs that could be applied to Shortfall Amounts = 7+2 = 9 RECs

**Step 4: Allocate Surplus RECs from Surplus REC Account to Shortfall Amounts**

Designated System ID	Contract Price (\$/REC)	Shortfall Amount	Surplus RECs applied	Drawdown REC Quantity	Drawdown Payment
1000	73.23	-3	0	-3	-\$219.69
1001	65.61	-5	3	-2	-\$131.22
1003	48.07	-6	6	0	0

(1) For each Designated System that has a Delivery Year Shortfall Amount, starting with the Designated System with the lowest Contract Price, Surplus RECs from the Surplus REC Account are reduced and allocated to meet the Delivery Year Shortfall Amount.

**Step 5: Calculate the Aggregate Drawdown Payment<sup>7</sup>**

Aggregate Drawdown Payment = sum of the Drawdown Payments = \$219.69 + \$131.22 = \$350.91

- (1) Buyer shall be entitled to draw down Seller’s Performance Assurance in the amount of the Aggregate Drawdown Payment pursuant to Section 6(d)(v)(1) of the Cover Sheet of the REC Contract.
- (2) If Seller’s Performance Assurance is less than the Aggregate Drawdown Payment, then Seller shall pay Buyer the difference within fifteen (15) Business Days of notice by Buyer.
- (3) Seller shall be required, within ninety (90) days of such drawing, to post as Seller’s Performance Assurance additional collateral to maintain or restore the Performance Assurance Amount.
- (4) For purposes of calculating the Delivery Year REC Performance in future years, each Designated System that has a Delivery Year Shortfall Amount for which such Delivery Year Shortfall Amount is covered by Surplus RECs and/or for which a payment from Seller or from Seller’s Performance Assurance has been applied to the Drawdown REC Quantity, such Designated System is deemed to have Delivered REC quantities equal to the Delivery Year Expected REC Quantity in such Delivery Year.

---

<sup>7</sup> This example in Step 5 assumes that there are no Drawdown Payments attributable to calculations under Section 6(e) of the Cover Sheet for the Delivery Year.

## EXHIBIT H

### Community Solar First Year Payment Adjustment Example

*(All Prices and Quantities are Illustrative only)*

In accordance with Sections 5(f)(i)-(iii) of the Cover Sheet, if the Designated System is a Community Renewable Energy Generation Project, then the Contract Price shall be adjusted to reflect the Anchor Tenant Contract Price and the Non-Anchor Tenant Contract Price as well as any adders that may be applicable to the Community Solar Subscription Mix at the time of Energization, and shall be subject to one (1) additional payment adjustment based on the information in the Community Solar First Year Report submitted by Seller to the IPA; and the quantity of RECs used for purposes of the first REC payment shall be based on the percent of Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and End User Customers at the time of Energization of such Designated System, and which shall be subject to one (1) additional adjustment based on the information in the Community Solar First Year Report submitted by Seller to the IPA.

The Designated System has the following characteristics:

- (a) Actual Nameplate Capacity: 1,500 kW
- (b) Capacity Factor: 16.42%
- (c) Date of Energization: 4/15/2020
- (d) SFA Price \$71.29
- (e) ABP Price \$52.28

	Energization (4/15/2020)	First Year Ending (5/31/2021)
(f) Anchor Subscriber Rate <sup>8</sup>	30%	30%
(g) End Use Customer Subscriber Rate <sup>9</sup>	40%	45%
(h) Subscriber Rate <sup>10</sup>	70%	75%
(i) Community Solar Subscription Mix	23%	28%
(j) Base Price (\$/REC) (weighted average)	\$63.14	\$63.69
(k) Small Subscriber Adder (\$/REC) (weighted average)	\$0.00	\$6.70 <sup>11</sup>
(l) Contract Price (\$/REC) (weighted average)	\$63.14	\$70.39

---

<sup>8</sup> For purposes of this illustrative example, it is assumed that the Anchor Tenant is not an eligible non-profit or public-sector facility under the SFA Low Income Community Solar Project Initiative. As such, the REC Price for the Anchor Tenant shall equal the applicable ABP price.

<sup>9</sup> The quantity of RECs used for purposes of calculating REC Payments shall be zero (0) if the percent of Non-Anchor Nameplate Capacity that has been subscribed by End User Customers is less than fifty percent (50%). In this example, given the percent subscribed by the Anchor Tenant is 30%, the minimum that must be subscribed by End Use Customers would be 35% (which is 50% of the remaining 70%).

<sup>10</sup> The term “Subscriber Rate” as used in this Exhibit H shall mean the percent of the Actual Nameplate Capacity that has been subscribed by the Anchor Tenant and End Use Customer at the point in time indicated (i.e., either the date of Energization or the end of the fourth Quarterly Period).

<sup>11</sup> The unadjusted “small subscriber adder” is assumed to be \$11.17 in this example and is applicable only to the End Use Customer (i.e., low income residential) portion of the payment and not the Anchor Tenant portion of the payment.

## Payment Adjustment

The payment adjustment shall be based on information from the Community Solar First Year Report submitted by Seller.

The Community Solar First Year Report is required to be submitted by Seller on or prior to June 10, 2021 and should be submitted concurrent with its invoice submitted on June 10, 2021, if any. This payment adjustment will be reflected in the Quarterly Netting Statement issued by the IPA on September 1, 2021 and can be included in Seller's invoice due September 10, 2021.

### Price Elements (based on Community Solar Subscription Mix)

(a) Contract Price at Energization	\$63.14
(b) Contract Price at end of First Year Period (i.e., May 31, 2021)	\$70.39
(c) Price difference [(b) - (a)]	\$7.25

### Quantity Elements (based on Subscriber Rate)

(d) number of months of REC Delivery associated with previous payment (100% of 180 months)	180
(e) number of months not subject to payment adjustment (April 15, 2020 – May 31, 2021 <sup>12</sup> )	13
(f) number of months for which prior payments are subject adjustment [(d)-(e)]	167

For the months obtained in (f), calculate the following:

(g) REC Quantity based on Subscriber Rate at Energization (i.e., 1.5MW x Capacity Factor x 8760 x 15 x Subscriber Rate of 70%) x (167/180), rounded down)	21,018
(h) REC Quantity based on Subscriber Rate at end of First Year Period: 5/31/2021 (i.e., 1.5MW x Capacity Factor x 8760 x 15 x Subscriber Rate of 75%) x (167/180), rounded down)	22,519
(i) Change in REC Quantity associated with period subject to Payment Adjustment [(h)-(g)]	1,501

### Payment Adjustment

(j) Apply Price Differential to Previously Paid REC Quantity [(c)*(g)]	\$152,380.50
(k) Pay for incremental Quantity [(b)*(i)]	\$105,655.39
(l) TOTAL PAYMENT ADJUSTMENT [(j) + (k)]	<b>\$258,035.89</b>

---

<sup>12</sup> For purposes of the payment adjustment calculation, if the date of Energization does not fall on the first of the month, then the date that is the first day of the month following the date of Energization shall be used as the start date of the period for which the initial Contract Price and initial Subscriber Rate recorded on date of Energization shall apply. For example, if the date of Energization is on April 15, 2020, then the number of months not subject to the payment adjustment shall be counted starting from May 1, 2020.

**Exhibit I**

**Community Renewable Energy Generation Project  
Subscription Information Access Authorization**

In order to ensure that the Illinois Power Agency can verify subscriber information submitted pursuant to Sections 10(b) and 10(c) of the Cover Sheet of this REC Contract for each Designated System that is a Community Renewable Energy Generation Project, the undersigned acknowledges and agrees to the following:

1. The undersigned is the Interconnection Customer (as that term is used in Title 83, Section 466.30 of the Illinois Administrative Code) for the indicated Designated System with respect to the indicated Interconnecting Utility;
2. The Illinois Power Agency shall have the right to request and obtain subscriber information on the Designated System from the Interconnecting Utility.
3. Upon written request from the Illinois Power Agency, the undersigned authorizes the Interconnecting Utility to disclose subscriber information (including the data fields indicated under “Subscriber Information” in Exhibit C to this REC Contract) regarding the Designated System.
4. The Agency will keep the subscriber information confidential pursuant to its obligations under Section 1-120 of the Illinois Power Agency Act.

Designated System Interconnection ID:

System Address:

Interconnecting Utility:

[Name of Project Company / Interconnection Customer]

By: \_\_\_\_\_

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

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



EXHIBIT J

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**Master  
Renewable  
Energy Certificate  
Purchase and Sale  
Agreement**

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**NOTICE AND DISCLAIMER:** This Master Renewable Energy Certificate Purchase and Sale Agreement (this “Agreement”) was prepared by an ad hoc working group comprised of members of the Renewable Energy Resources Committee and the Special Committee on Energy and Environmental Finance of the American Bar Association’s Section of Environment, Energy and Resources (“SEER Committees”), the Environmental Markets Association (“EMA”), and the American Council on Renewable Energy (“ACORE”) to facilitate orderly trading in and development of renewable energy certificate (also known as green tags) markets. Neither the American Bar Association, the ABA Section of Environment, Energy and Resources, the SEER Committees, EMA, nor ACORE, nor any member of any of the foregoing, represents that this document is enforceable, and none of the foregoing will be responsible for anything connected with this document’s use, or any damages or other consequences resulting therefrom. By making it available, the foregoing do not offer legal advice, and all users are urged to consult with their own legal counsel to ensure that their commercial objectives will be achieved and legal interests protected. This document is jointly copyrighted 2007 by EMA and ACORE, and all potential users of this Agreement are hereby granted a free and perpetual license to use this document, so long as the source is credited by the user. The working group intends to periodically review and revise this document after publication, to keep it current and responsive to market developments and comments received. This statement of intention in no way should be construed as a warranty or assurance that further revisions will be forthcoming, or of the timeliness or comprehensiveness of such revisions. If you are interested in becoming part of the working group, or have questions or comments (but not requests for legal advice) you may contact the persons indicated at <http://environmentalmarkets.org/>.

**MASTER RENEWABLE ENERGY CERTIFICATE  
PURCHASE AND SALE AGREEMENT**

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**MASTER RENEWABLE ENERGY  
CERTIFICATE PURCHASE AND SALE  
AGREEMENT**

**COVER SHEET**

This Master Renewable Energy Certificate Purchase and Sale Agreement (this "Agreement") is made as of this \_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") between the following (each a "Party" and collectively, the "Parties"):

<b>2.2 Payment Terms</b>	<input type="checkbox"/> (a) Payment on Delivery <input type="checkbox"/> (b) Monthly Invoicing <input type="checkbox"/> (c) Prepayment <input type="checkbox"/> (d) Semiannual Invoicing
<b>4. Certain Credit Terms.</b>	Applicable (complete Certain Credit Terms) Not Applicable
<b>8. Governing Law:</b>	State (or Commonwealth) of _____
<b>9.7 Confidentiality</b>	Applicable (If not checked, inapplicable)
<b>9.8 Dispute Resolution</b>	Waiver of Jury Trial
<b>Addenda</b> (check all those selected)	Non-Binding Mediation in _____. Binding Arbitration in . <input type="checkbox"/> Baseball Arbitration
<b><u>Other Changes</u></b>	Specify, if any:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

\_\_\_\_\_  
Party A Name  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Party B Name  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Further Contact Information and Certain Credit Terms**

**Invoices and Accounting:**

Attn:  
Phone:  
Facsimile:

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

Article 4

Party A Credit Protection:

- 4.1 Financial Information:
  - Not Applicable
  - Applicable
  - Other entity (specify): \_\_\_\_\_
  - In addition (specify): \_\_\_\_\_
- 4.2 Credit Assurances:
  - Not Applicable
  - Applicable
- 4.3 Collateral Threshold:
  - Not Applicable
  - Applicable under EEI
  - Applicable under ISDA
  - Applicable Standalone

If Applicable Standalone, complete the following:

- 4.4 Downgrade Event:
  - Not Applicable
  - Applicable
  - Applicable- Otherwise Specified:
- 4.5 Guarantor for Party B:  
Guarantee Amount: \$

Article 5: Events of Default; Remedies

Cross Default for Party A:  
Party A Cross Default Amount  
Other Entity: [Guarantor]  
Cross Default Amount: \$

**Invoices and Accounting:**

Attn:  
Phone:  
Facsimile:

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

Credit and Collateral Requirements

Party B Credit Protection:

- 4.1 Financial Information:
  - Not Applicable
  - Applicable
  - Other entity (specify): \_\_\_\_\_
  - In addition (specify): \_\_\_\_\_
- 4.2 Credit Assurances:
  - Not Applicable
  - Applicable
- 4.3 Collateral Threshold:
  - Not Applicable
  - Applicable under EEI
  - Applicable under ISDA
  - Applicable Standalone

If Applicable Standalone, complete the following:

- 4.4 Downgrade Event:
  - Not Applicable
  - Applicable
  - Applicable- Otherwise Specified:
- 4.5 Guarantor for Party A:  
Guarantee Amount: \$

Cross Default for Party B:  
Party B Cross Default Amount:  
Other Entity: [Guarantor]  
Cross Default Amount: \$

Other Changes:

## ARTICLE 1: DEFINITIONS

1.1 “Administrator” means a state or federal administrator, such as the Clean Air Markets Division of the Environmental Protection Agency, GIS, Certification Authority, if applicable, and any Governmental Authority or other body with jurisdiction over Certification under, or the transfer or transferability of Environmental Attributes in, any particular Applicable Program.

1.2 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, with “control” meaning the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Agreement” is defined on the Cover Sheet.

1.4 “Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the Applicable Program or any one or both of the Parties or the terms hereof.

1.5 “Applicable Program” means a domestic, international or foreign RPS, renewable energy, emissions reduction or Product Reporting Rights program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes. An Applicable Program includes any legislation or regulation concerned with renewable energy, oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by an Administrator, or under any present or future domestic, international or foreign RECs, Products, Environmental Attributes or emissions trading program. Applicable Programs do not include legislation providing for production tax credits or other direct third-party subsidies for generation by a Renewable Energy Source.

1.6 “Attestation” means a Transfer Certificate or Certification by Seller as the Certification Authority in form and substance as agreed to by the Parties separate and apart from the Product Order, examples of which for voluntary and potentially other Applicable Programs is attached as Exhibit C and D.

1.7 “Bankrupt” means an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 30 days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debts as they fall due.

1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, is the Party from whom the notice, payment or delivery is sent and by whom the notice or payment or delivery is received.

1.9 “Buyer” means for any particular Transaction, the buyer of the Product.

1.10 “Cancellation of Applicable Program” means that the Applicable Program is

discontinued, suspended, canceled, repealed, or otherwise no longer scheduled to proceed.

1.11 “Certification” means, if applicable, the certification by the Certification Authority of the Applicable Program of (i) the creation and characteristics of a REC, (ii) the qualification of a Renewable Energy Facility or a Renewable Energy Source under an Applicable Program, (iii) Delivery of a REC or (iv) other compliance with the requirements of an Applicable Program.

1.12 “Certification Authority” means an entity that certifies the generation, characteristics or Delivery of a REC, or the qualification of a Renewable Energy Facility or Renewable Energy Source under an Applicable Program, may include, as applicable, the Administrator, a GIS, a Governmental Authority, the Verification Provider, one or both of the Parties, an independent auditor, or other third party, and should include (i) if no Applicable Program is specified, the Seller, or the generator of the RECs if the Seller is not the generator, (ii) if the RECs are to be Delivered pursuant to an Applicable Program, the Administrator of the Applicable Program, or such other person or entity specified by the Applicable Program to perform Certification, or (iii) such other person or entity specified by the Parties.

1.13 “Certified Renewable Energy Facility” means a Renewable Energy Facility that is recognized under an Applicable Program as specified by the Parties.

1.14 “Certified Renewable Energy Source” means any energy source that is recognized under an Applicable Program as specified by the Parties.

1.15 “Claiming Party” is defined in Article 6.

1.16 “Confirmation” means a Product Order confirming an oral Transaction.

1.17 “Costs” means, with respect to the Non-Defaulting Party, the present value of brokerage fees, commissions, attorneys fees, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating or replacing any arrangement pursuant to which it has hedged its obligations; and any charges, penalties, fines or fees imposed or assessed against the Non-Defaulting Party by an Administrator or Governmental Authority on account of Delivery not occurring on the Delivery Date, as determined by the Non-Defaulting Party in a commercially reasonable manner.

1.18 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.19 “Cross Default Amount” means, for a Party, the cross default amount, if any, set forth in the Cover Sheet for that Party.

1.20 “Defaulting Party” is defined in Section 5.1.

1.21 “Delivered” or “Delivery” means the transfer from Seller to Buyer of the specified amount of the Product, as specified pursuant to a Transaction, including, as specified or required by the Applicable Program, recognition by the Administrator and Certification Authority of the transfer to Buyer, or Seller’s delivery to Buyer of a Transfer Certificate. Delivery of Product can be independent of delivery of the electricity with which the Product is associated.

1.22 “Delivery Date” means the dates specified in the Product Order for Delivery of the Product to the Buyer, which date must be on or after the date the Product comes into existence.

1.23 “Disclosure Document” means a part of the Product Order document disclosing certain

matters respecting the REC, its Environmental Attributes, and their Verification, in the form of Part B of Exhibit A or as otherwise agreed to by the Parties.

1.24 “Downgrade Event” means, unless otherwise specified on the Cover Sheet, for a Party means that Party’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or becomes no longer rated by either S&P or Moody’s.

1.25 “Early Termination Date” is defined in Section 5.2.

1.26 “Effective Date” is defined on the Cover Sheet.

1.27 “Environmental Attribute” means an aspect, claim, characteristic or benefit associated with the generation of a quantity of electricity by a Renewable Energy Facility, other than the electric energy produced, and that is capable of being measured, verified or calculated. An Environmental Attribute may include one or more of the following identified with a particular megawatt hour of generation by a Renewable Energy Facility designated prior to Delivery: the Renewable Energy Facility’s use of a particular Renewable Energy Source, avoided NO<sub>x</sub>, SO<sub>x</sub>, CO<sub>2</sub> or greenhouse gas emissions, avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Renewable Energy Facility itself) or as otherwise defined under an Applicable Program, or as agreed by the Parties. Environmental Attributes do not include production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility.

1.28 “ERCOT” means the Electric Reliability Council of Texas.

1.29 “Event of Default” is defined in Section 5.1.

1.30 “Force Majeure” is defined in Article 6.

1.31 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined by it in a commercially reasonable manner.

1.32 “GIS” means a generation information system, generation attribute tracking system or other system that records generation from Renewable Energy Facilities in any particular geographical region, such as WREGIS, NEPOOL GIS, ERCOT, PJM EIS GATS, M-RETS, or, if applicable, an Independent System Operator or a Regional Transmission Organization.

1.33 “Government Action” means action by a Governmental Authority, Administrator, Certification Authority, or by the governing body of an Applicable Program to change the eligibility of a Product for an Applicable Program or substantially change the requirements for compliance by persons obligated to comply with the Applicable Program which in either case has a material adverse effect on the value of a Product that is the subject of a particular Transaction, and includes a change in Applicable Law that disqualifies any particular Renewable Energy Facilities (by Renewable Energy Sources, Initial Operating Date, or otherwise) or Product, that is the subject of a Transaction from an existing Applicable Program.

1.34 “Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

1.35 “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.



1.36 “Independent Amount” means, with respect to a Party, the amount, if any, set forth in the Cover Sheet for such Party, or if no amount is specified, zero, unless specified otherwise in a Product Order for a Transaction.

1.37 “Initial Operating Date” means the date when a particular Renewable Energy Facility first became commercially operational.

1.38 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined by it in a commercially reasonable manner.

1.39 “Moody’s” means Moody’s Investor Services, Inc.

1.40 “M-RETS” means the Midwest Renewable Energy Tracking System.

1.41 “NEPOOL GIS” means the New England Power Pool Generation Information System.

1.42 “Non-Defaulting Party” is defined in Section 5.2.

1.43 “NYISO” means the New York Independent System Operator.

1.44 “Performance Assurance” means collateral in the form of cash, letters of credit, or other security acceptable to the requesting Party.

1.45 “PJM EIS GATS” means the PJM Environmental Information Services, Inc. Generation Attribute Tracking System.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Potentially Defaulting Party” means a Party that, but for a cure of a Potential Event of Default or failure of performance, would be a Defaulting Party.

1.48 “Potentially Non-Defaulting Party” means a Party that, but for a cure of a Potential Event of Default or failure of performance by the Potentially Non-Defaulting Party, would be a Non-Defaulting Party.

1.49 “Product” means the RECs to be delivered in a particular Transaction, which may include Environmental Attributes, Verifications, Certifications and other characteristics as specified in a Product Order.

1.50 “Product Order” is the form used by the Parties to effect a Transaction in the form of Exhibit A, Exhibit B or as otherwise agreed by the Parties, specifying the terms of such Transaction, including the following: (1) the Product including a description of the Environmental Attributes in the Product, (2) the quantity to be purchased and sold; (3) the Purchase Price; (4) the Delivery Dates; and, (5) if necessary in accordance with the terms of the Transaction, (a) the Vintages; (b) the Renewable Energy Facility or Facilities from which the Product is to be generated; (c) the Certification Authority; and (d) the Verification Provider.

1.51 “Product Reporting Rights” means the exclusive right to report sole ownership of the Product to any Certification Authority, GIS, Administrator, Governmental Authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future Applicable Program.

1.52 “Purchase Price” means the price to be paid for a particular delivery of Product in a Transaction.

1.53 “Regulatorily Continuing” means, with respect to a Transaction, that if a Product is represented by a Party as complying with the requirements of an Applicable Program and Regulatorily Continuing, such compliance will be as of both the Delivery Date and the Trade Date, and Seller will do what is necessary to cause the Product that is delivered to comply with such requirements, including delivering substitute Product acceptable to Buyer if appropriate.

1.54 “Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an Applicable Program or Certification Authority indicating generation of a particular quantity of energy, or Product associated with the generation of a specified quantity of energy from a Renewable Energy Source by a Renewable Energy Facility. A REC may include some or all additional Environmental Attributes associated with the generation of electricity, and those Environmental Attributes may, but need not be, Verified or Certified by the same or different Verification Authorities or Certification Authorities, and disaggregated and retained or sold separately, all as the Parties agree in a Product Order. A REC is separate from the energy produced and may be separately transferred or conveyed.

1.55 “Renewable Energy Facility” means an electric generation unit or other facility or installation that produces electric energy using a Renewable Energy Source.

1.56 “Renewable Energy Source” means an energy source that is not fossil carbon-based, non-renewable or radioactive, and may include solar, wind, biomass, geothermal, landfill gas, or wave, tidal and thermal ocean technologies, and includes a Certified Renewable Energy Source.

1.57 “Renewable Portfolio Standard” or “RPS” means a state or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified persons to be generated from Renewable Energy Sources.

1.58 “Reporting Year” means a twelve-month compliance reporting period required under the Applicable Program.

1.59 “S&P” means the Standard & Poor’s Rating Group.

1.60 “Seller” means for any particular Transaction, the seller of the Product.

1.61 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, including those which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.62 “Standard REC” and other Product Order defined terms, such as “Basic REC” and “Specified REC”, are defined in Schedule P.

1.63 “Taxes” mean all national, state, regional, provincial, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, fuel, gas import, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by any Governmental Authority, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

1.64 “Terminated Transaction” is defined in Section 5.2.

1.65 “Termination Payment” is defined in Section 5.3.

1.66 “Trade Date” means the date a Transaction is entered into by execution of a Product Order or being verbally agreed upon (and confirmed in writing within three Business Days) by both transacting Parties.

1.67 “Transaction” is defined in Article 2.

1.68 “Transfer Certificate” means an Attestation, GIS record of ownership transfer, or other document evidencing Delivery of a REC and otherwise satisfying the requirements of the Parties and any specified Applicable Program.

1.69 “Unit Specific”, and other Product Order terms such as “Unit Non-specific”, “Unit Contingent” and “Generation Contingent”, are defined in Schedule P.

1.70 “UNFCCC” means the United Nations Framework Convention on Climate Change or the Kyoto Protocol thereto.

1.71 “Verification”, if applicable, is the Verification Provider’s report of its application of a Verification Methodology with respect to Environmental Attributes, as set forth by the Parties on the Product Order.

1.72 “Verification Methodology”, if any, means an identified, disclosed, quantitative methodology, capable of being expressed in words and quantitative factors, to measure activity or avoided activity, used by a Verification Provider.

1.73 “Verification Provider”, if any, means an entity that could be an entity other than the Certification Authority, but could also be the Certification Authority, that verifies or audits specified aspects of Products, RECs, or one or more specified Environmental Attributes.

1.74 “Vintage” means the calendar year, Reporting Year, or other calendar period specified by the Parties or the Certification Authority, as applicable, in which the Product is created or first valid for use under an Applicable Program.

1.75 “WREGIS” means the Western Renewable Energy Generation Information System.

1.76 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” or “Exhibits” are to articles, sections, schedules, annexes, or exhibits hereof; (c) all references to a particular entity or market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Article, Section or subsection hereof; (e) all accounting terms not specifically defined herein will be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine includes the feminine and neuter and vice versa; (h) “including” is construed in its broadest sense to mean “including without limitation” or “including, but not limited to”; (i) references to agreements and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements or instruments that are duly entered into and effective against the parties thereto or their permitted successors and assigns; (j) a reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the Effective Date or Trade Date, as applicable, or Delivery Date with respect to a Product that is Regulatorily Continuing, together with all amendments and supplements thereto and any statute or regulation substituted for such statute or regulations; and (k)

the word “or” is not necessarily exclusive.

## **ARTICLE 2: TRANSACTIONS; PAYMENT, TAXES AND TRANSFER OF TITLE**

2.1 Transactions. The Parties desire to enter into one or more transactions for the purchase and sale of Products under this Agreement (each a “Transaction”). Each such Transaction, unless otherwise agreed in writing, will be governed by this Agreement, including any supplemental terms or conditions contained in any annexes or schedules hereto. Each Transaction will be effected or Confirmed pursuant to a Product Order, unless the Parties otherwise agree in writing. The Parties intend for this Agreement to be a “master netting agreement” under United States Bankruptcy Code §101(38A).

2.2 Payment. Transactions will be settled by payment, in immediately available funds by wire or electronic fund transfer to the account set forth on the Cover Sheet, unless otherwise provided pursuant to the operating terms of the Administrator or other Delivery mechanism of the Applicable Program or agreed by the Parties in a particular Transaction, as follows:

(a) If the Parties have elected Payment on Delivery on the Cover Sheet, payment for any Product or part thereof to be Delivered pursuant to the terms of the Transaction will be due within three Business Days of the Delivery Date.

(b) If the Parties have elected Monthly Invoicing on the Cover Sheet, all invoices under this Agreement will be due and payable on or before the later of the 20th day of each month, or 10th day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.

(c) If the Parties have elected Prepayment on the Cover Sheet, payment for any Product or part thereof to be Delivered pursuant to the terms of a Transaction will be due from Buyer prior to Delivery, and Seller will not be obligated to make Delivery until Seller is in receipt of such payment.

(d) If the Parties have elected Semiannual Invoicing on the Cover Sheet, payment for all Transactions under this Agreement, or any Product or part thereof to be Delivered pursuant to the terms of a Transaction, will be due and payable on or before the later of the second day of each January and each July or, if such day is not a Business Day, then on the next Business Day.

Each Party will make payments in accordance with invoice instructions by electronic funds transfer, or by other mutually agreed methods, to the account designated on the Cover Sheet. Any failure by Buyer to make a payment or prepayment will not excuse Buyer’s performance, and, unless otherwise provided in a Transaction, any failure by Seller to Deliver the quantity agreed to in the Transaction will not excuse Seller’s performance. Any amounts not paid by the due date are delinquent and will accrue interest at the prime rate of interest until an Event of Default has been declared, in which case such amounts will bear interest at the prime lending rate of interest plus three percent per annum. A Party may, in good faith, dispute the correctness of any invoice within one year. If an invoice or portion thereof is disputed, the undisputed portion of the invoice must be paid when due, with notice of the objection given to the other Party. Any invoice dispute must be in writing and state the basis for the dispute, which must be in good faith. Subject to Section 5.4, a Party may withhold payment of the disputed amount until two Business Days following the resolution of the dispute, and any amounts not paid when originally due will bear interest at the prime lending rate of interest from the due date as originally invoiced. Inadvertent overpayments will be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest at the prime lending rate of interest from and including the date of such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section within one year after the invoice is rendered. The Parties will discharge mutual debts and payment obligations due and owing to each other pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products, including any related damages calculated, interest, and payments or credits, will be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

2.3 Confirmation. Seller may confirm an oral Transaction by providing Buyer a Product Order within three Business Days after the Trade Date. In such event, Buyer will notify Seller in writing within two Business Days of Buyer's receipt if Buyer objects to any term of the Product Order, failing which Buyer will be deemed to have accepted the terms as sent. If Seller does not send a Product Order within three Business Days after the Trade Date, Buyer may send Seller a Product Order, and in such case Seller will notify Buyer in writing within two Business Days of Seller's receipt if Seller objects to any term of the Product Order, failing which Seller will be deemed to have accepted the terms as sent. If Seller and Buyer each send a Product Order and neither Party objects to the other Party's Product Order within two Business Days of receipt, Seller's Product Order will be deemed accepted and the controlling Product Order, unless Seller's Product Order was sent more than three Business Days after the Trade Date and Buyer's Product Order was sent prior to Seller's Product Order, in which case Buyer's Product Order will be deemed accepted and the controlling Product Order. Failure by either Party to send or return an executed Product Order, or any objection by either Party, will not invalidate the Transaction agreed to by the Parties.

2.4 Taxes and Fees. Seller will be responsible for any Taxes imposed on the creation, ownership, or transfer of Product under this Agreement up to and including the time and place of its Delivery. Buyer will be responsible for any Taxes imposed on the receipt or ownership of Product at or after the time and place of its Delivery. Each Party will be responsible for the payment of any fees, including brokers fees, incurred by it in connection with any Transactions hereunder.

2.5 Transfer of Title. None of Seller's property interest in the Product will pass to Buyer until the Delivery and payment set forth above are complete. Upon such completion, all rights, title and interest in and to the Product, to the full extent the same is property, will transfer to Buyer. To the extent that any Transaction is for Product not yet generated at the time of the Transaction, Seller agrees to make and Buyer agrees to accept actual Delivery of the Product, unless sooner netted out pursuant to opposite purchases and sales between the Parties.

2.6 Effect of Transfer of Environmental Attributes. By transferring a Product in a Transaction, Seller transfers any and all, and the exclusive, right to use that Product in any Applicable Program, whether or not the Product Order specifies that the Product is eligible for a particular Applicable Program, and whether or not the particular Product or any Environmental Attribute therein constitutes property, as well as any and all Product Reporting Rights. Transfer of an Environmental Attribute does not transfer eligibility for production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility. Delivery of a Product grants the Buyer the right, exclusive to the full extent applicable, to verify, certify, and otherwise take advantage of the rights, claims and ownership in the Product.

2.7 Verifying and Certifying. The type and amount of any Environmental Attribute transferred and Delivered will be measured, calculated, Verified and Certified as agreed by the Parties or as required pursuant to the Applicable Program. Unless otherwise specified in a Product Order or the written rules of the Applicable Program specified by the Parties, Seller will ensure that the Certification Authority, Verification Provider and Verification Methodologies are selected in compliance with this Agreement and the rules of the Applicable Program. A Verification Provider and Verification Methodology may be designated before or after Delivery, but unless required pursuant to the terms of the Applicable Program specified by the Parties, Verification is optional and need not be specified; and unless otherwise specified or required to comply with a representation for a Product sold as Regulatorily Continuing, expenses of Verification are the responsibility of the Seller if Verification is designated on or before the Trade Date, and the responsibility of Buyer if designated thereafter. Unless otherwise specified in the Product Order or the rules of the Applicable Program, the costs of the Verification Authority and Certification Authority are Seller's responsibility.

2.8 Secondary Markets; Exclusion of Warranties. Unless otherwise specified in a Product Order, neither Seller nor Buyer will have any liability to the other for any act, omission,

misrepresentation, or breach (other than act or omission due to the failure to have fees, charges or expenses paid by the responsible Party) by a Certification Authority or Verification Provider, nor, unless otherwise specified, does Seller or Buyer warrant or represent that any particular Verification Methodology is the optimum way to calculate generation, emissions, avoidances, or other matters calculated or estimated pursuant thereto. Except with respect to a Product represented as Regulatorily Continuing, to the extent a Product is evidenced or Delivered with a Transfer Certificate, Disclosure Document or other documents executed by or setting forth the findings of third parties, the sole representations of Seller with respect thereto will be that (i) Seller has no actual knowledge that any statement therein is false or intentionally misleading, and (ii) the documents provided by it are true and correct copies of the documentation it has. All representations and warranties made by a Seller to a Buyer with respect to the Environmental Attributes, Renewable Energy Facility, Renewable Energy Source, energy delivery location, or Vintage of a Product are transferable by the Buyer. However, as different Applicable Programs have differing compliance requirements, any representation that a Product is Regulatorily Continuing applies solely to Product Delivery of the Seller to the Buyer and only up to the Delivery Date, and the benefit of such representation is not assignable by Buyer, except as consented to be Seller in writing. Any other representation of compliance with an Applicable Program applies only up to the Trade Date. A Product Order may provide by its terms that the Renewable Energy Facility will be designated by the Seller after the Trade Date and on or before the Delivery Date, so long as once having been specified, the Delivery complies with the requirements of the Applicable Program, in the manner represented by Seller.

2.9 Scope of Agreement. Any transaction for the purchase and sale of Product which has been or will be entered into between the Parties constitutes a “Transaction” which is subject to, governed by, and construed in accordance with, the terms hereof.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

3.1 Mutual Representations and Warranties. On the Effective Date and on each Trade Date, each Party represents and warrants to the other that:

(a) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization;

(b) it has the power and authority to enter into this Agreement and to perform its obligations hereunder;

(c) its execution and performance do not violate or conflict with Applicable Law, any provision of its constituent documents, or any contract binding on or affecting it or any of its assets or any order or judgment of any Governmental Authority applicable to it or its assets;

(d) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into and performing this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with;

(e) its obligations hereunder are legal, valid and binding, enforceable in accordance with their respective terms, subject to applicable bankruptcy or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law;

(f) no Event of Default, or Potential Event of Default, has occurred and is continuing, and none will occur as a result of its entering into or performing this Agreement or any Transaction;

(g) it is not relying upon any representations of the other Party other than those expressly set

forth herein, and it is acting for its own account, and not as agent or in any other capacity, fiduciary or otherwise;

(h) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(i) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into a transaction, and understands that information and explanations related to the terms and conditions of any Transaction will not be considered investment advice or a recommendation to enter into that Transaction;

(j) it has made its own independent trading and investment decisions to enter into each transaction and as to whether such transaction is appropriate or proper for it based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party;

(k) it has not received from the other Party any assurance, guarantee or promise as to the expected or projected success, profitability, return, performance, result, effect, consequence or benefit (either economic, legal, regulatory, tax, financial, accounting or otherwise) hereunder;

(l) there is no pending or to its knowledge threatened litigation, arbitration or administrative proceeding before any Governmental Authority or any arbitrator that is likely to materially adversely affect the ability of either Party to perform its obligations hereunder;

(m) it is a “forward contract merchant” within the meaning of United States Bankruptcy Code §101(26), and this Agreement and all Transactions hereunder constitute “forward contracts” within the meaning of United States Bankruptcy Code §101(26).

(n) it is an “eligible commercial entity”, and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(11) and 1a(12), respectively, and all Transactions hereunder have been subject to individual negotiation by the Parties.

(o) all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading;

3.2 Warranties of Seller. With respect to each Transaction, Seller represents and warrants to Buyer on the Trade Date for each Product that such Product complies with any Applicable Program for which the Product is specified as so complying in the Product Order, and on the Delivery Date for each Product that: (i) Seller has good and marketable title to such Product; (ii) Seller has not sold the Product or any Environmental Attribute of the Product to be transferred to Buyer to any other person or entity; (iii) all right, title and interest in and to such Product are free and clear of any liens, taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer; (iv) each Environmental Attribute and REC meets the specifications set forth in the Product Order; (v) the Product is separate from the electric energy generated by the Renewable Energy Facility, unless otherwise specified by the Parties; (vi) only if specified in the Product Order as Regulatorily Continuing, that such Product complies with any Applicable Program for which the Product is specified as so complying and being Regulatorily Continuing through and up to the Delivery Date, (vii) unless separately disclosed to Buyer, with respect to Seller, the Product is not transferred, and has not been transferred pursuant to a contract filed or required to be filed with or approved by any Governmental Authority having jurisdiction over the sale of electric energy; and (viii) subject to Section 2.8 and unless otherwise specified to the contrary on the Product Order, Seller has disclosed to Buyer any and all Transfer Certificates, Attestations, Disclosure Documents, all other relevant documentation received by it in connection with its

acquisition of the Product sold to Buyer hereunder, and any use by any Environmental Attribute of the Product by Seller or any other person or entity to comply with any Applicable Program. Seller makes no claims respecting Verification that are not set forth in the Product Order.

3.3 LIMITATION OF WARRANTIES. ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO CONFORMITY WITH ANY MODEL OR SAMPLES, ARE DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT WITH RESPECT TO A PRODUCT STATED TO BE REGULATORILY CONTINUING, AND IN THAT CASE ONLY TO THE EXTENT SET FORTH HEREIN OR IN A PRODUCT ORDER, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY HEREUNDER WITH RESPECT TO ANY FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY OR ADMINISTRATOR.

3.4 Indemnity. Each Party will indemnify, defend and hold harmless the other Party from and against any claims or demands made by others arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided herein, except to the extent arising from such Party's own gross negligence or willful misconduct. Each Party will indemnify, defend and hold harmless the other Party against any Taxes for which such Party is responsible under Section 2.4.

3.5 Cooperation on Delivery; Review of Records. Upon either Party's receipt of notice from an Administrator that the transfer of RECs pursuant to a Transaction will not be recognized or Product Delivery was not made as required pursuant to the terms of a Transaction, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such action as are necessary and commercially reasonable to cause such transfer to be recognized and Product Delivered. Each Party agrees to provide copies of its records to the extent reasonably necessary for the Verification Provider or Certification Authority to perform the functions designated on the Product Order, and to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party. If any fact, statement, charge or computation contained any inaccuracy, the necessary adjustments and any resulting payments will be made promptly and the payments will bear interest at the prime lending rate of interest from the date the overpayment or underpayment was made until paid. If Seller is not the owner or operator of the Renewable Energy Facility that generated all of the Product in a Transaction, Seller will cooperate with Buyer in any efforts to review the records of the original Seller of such Product. If Seller is the owner or operator of the Renewable Energy Facility that generated any portion of the Product in a Transaction, it consents to the Buyer's assignment of rights under this Section to any subsequent purchaser of such Product. The obligations set forth in this Section terminate with respect to any particular Transaction on the later of thirty days following the last banking date under the Applicable Program for the Vintage of the Product Delivered, or the third anniversary of the Delivery Date.

3.6 Survival. Articles 1, 2, 3, 5, 8 and 9 survive expiration or termination hereof.

#### **ARTICLE 4: CREDIT AND COLLATERAL REQUIREMENTS**

The applicable credit and collateral requirements are specified on the Cover Sheet.

4.1 Financial Information. If indicated as Applicable on the Cover Sheet, if requested by a Party, the other Party will deliver (i) within 120 days following the end of each fiscal year, a copy of such Party's, or if applicable, the entity's specified on the Cover Sheet, annual report containing audited consolidated financial statements for such fiscal year, (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the Party's, or, if applicable, the entity's specified on



the Cover Sheet, quarterly report containing unaudited consolidated financial statements for such fiscal quarter, and (iii) such other information as specified in the Cover Sheet. In all cases the statements will be for the most recent accounting period and prepared in accordance with generally accepted accounting principles in the jurisdiction in which the reporting entity is organized; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay will not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. Timely filing of Form 10-K, Form 10-Q or Form 8-K with the Securities and Exchange Commission satisfies the requirements of this Section.

4.2 Credit Assurances. If stated to be applicable on the Cover Sheet for a Party, if the other Party has commercially reasonable grounds to believe that Party's creditworthiness or performance hereunder has become unsatisfactory, upon written notice requesting Performance Assurance in an amount determined by the other Party in a commercially reasonable manner, that Party will have three Business Days to provide such Performance Assurance. Failure to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to the requesting Party within three Business Days of receipt of notice is an Event of Default.

4.3 Collateral Threshold. If the Parties have in place between them an Edison Electric Institute Master Power Purchase and Sale Agreement, and have selected Collateral Threshold Applicable under EEI on the Cover Sheet, then, notwithstanding whether an Event of Default has occurred, the Termination Payment that would be owed to by a Party hereunder will be included in the calculation of each Party's Termination Payment under (and as defined in) such agreement, and an event of default under such agreement will be an Event of Default hereunder and an Event of Default hereunder will be an event of default under such agreement. If the Parties have in place between them an ISDA Master Agreement with Credit Support Annex, and have selected Collateral Threshold Applicable under ISDA on the Cover Sheet, then, notwithstanding whether an Event of Default has occurred, the Termination Payment that would be owed to by a Party hereunder will be included in the calculation of each Party's Exposure under (and as defined in) such agreement, and an event of default under such agreement will be an Event of Default hereunder and an Event of Default hereunder will be an event of default under such agreement. If the Parties have elected either of the two foregoing options but at any time do not have in effect between them the referenced other agreements, or such referenced agreements do not provide for the exchange of margin or collateral thresholds, or if the Parties have selected Collateral Threshold Applicable Standalone on the Cover Sheet, if at any time and from time to time, notwithstanding whether an Event of Default has occurred, the Termination Payment that would be owed to by a Party plus that Party's Independent Amount, if any, exceeds the Collateral Threshold specified, then the Party to whom such amount would be owed, on any Business Day, may request that owing Party to provide Performance Assurance in an amount equal to the amount of such excess, less any Performance Assurance already posted. Such Performance Assurance will be provided within three Business Days of the date of request. On any Business Day, but no more frequently than weekly with respect to letters of credit and daily with respect to cash, if there has been a reduction in the amount of such excess, the posting Party may request that such Performance Assurance be reduced correspondingly by the amount of such excess, if any. Failure to provide such Performance Assurance to the requesting Party within three Business Days of request is an Event of Default. For purposes of this Section, the Termination Payment will be calculated pursuant to Article 5 by the requesting Party as if the posting Party had defaulted and all outstanding Transactions had been liquidated, even if that is not actually the case, and in addition thereto, and include the net amount of all amounts owed but not yet paid between the Parties, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions. A Party holding Performance Assurance in the form of cash posted by the other Party will pay the posting Party interest on such cash, monthly, at the Federal Funds rate of interest.

4.4 Downgrade Event. If Downgrade Event is indicated as Applicable on the Cover Sheet, if at any time there occurs a Downgrade Event in respect of a Party, then the other Party may require Performance Assurance in an amount determined by that Party in a commercially reasonable manner. Failure to provide such Performance Assurance to the requesting Party within three Business Days of

request is an Event of Default.

4.5 Guarantee. If specified on the Cover Sheet, the Parties will provide, prior to or concurrently with the execution and delivery hereof, a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet, in a form reasonably acceptable to the beneficiary Party.

#### **ARTICLE 5: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant hereto if such failure is not remedied within three Business Days after written notice;

(b) failure to Deliver or receive Product when due pursuant to a Transaction, provided that if the Potentially Defaulting Party pays a Settlement Amount to the Potentially Non-Defaulting Party for such Transaction (or the missing components thereof or performance hereunder if partial performance has been rendered) as if a Terminated Transaction as of the Delivery Date within three Business Days after the Potentially Non-Defaulting Party’s notice to the Potentially Defaulting Party of the amount thereof, it will not be an Event of Default, unless five such failures have occurred in a consecutive rolling ninety day period.

(c) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when made or repeated;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness and collateral requirements agreed to pursuant to Article 4 as specified on the Cover Sheet;

(f) a Party’s failure to perform any other material covenant or obligation set forth herein if such failure is not remedied within 20 Business Days after written notice;

(g) if cross default is indicated for such Party on the Cover Sheet, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other Party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount specified on the Cover Sheet, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or other Party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount specified on the Cover Sheet;

(h) with respect to such Party’s Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure is not remedied within three Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes hereof (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty relates without the written consent of the other Party; or

(v) a Guarantor repudiates, disaffirms, disclaims, or rejects or challenges, in whole or in part, the validity of any guaranty.

5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the "Non-Defaulting Party") will have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out (a) all amounts that are due to the Defaulting Party for Product that has been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any cash, security or other Performance Assurance then available to the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the "Termination Payment") payable by the Defaulting Party. The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within two Business Days following notice.

5.4 Calculation Disputes. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within two Business Days of receipt of Non-Defaulting Party's calculation, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that the Defaulting Party must first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the full Settlement Amount or Termination Payment, as applicable. References to Defaulting Party and Non-Defaulting Party in this Section include the Potentially Defaulting Party and Potentially Non-Defaulting Party, as applicable.

5.5 Suspension of Performance. Notwithstanding any other provision hereof, if an Event of Default or a Potential Event of Default has occurred and is continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, has the right (i) to suspend performance under any or all Transactions and (ii) to the extent an Event of Default has occurred and is continuing, to exercise any remedy available at law or in equity, except as limited by Section 5.7.

5.6 Not a Penalty. The Parties intend that no part of this Article Five or any amount due thereunder represents a penalty to the Defaulting Party or Potentially Defaulting Party.

5.7 Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE, AND, EXCEPT FOR FAILURE TO DELIVER PRODUCTS PROMISED AS REGULATORY CONTINUING AS SPECIFICALLY SET FORTH HEREIN, NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR CONSEQUENTIAL DAMAGES.

## **ARTICLE 6: FORCE MAJEURE**

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, that upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, confirmed in writing, the obligations of the Claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be in breach hereof or liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure will have until the end of the Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of Force Majeure. "Force Majeure" means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under one or more Transactions, which event or circumstance was not reasonably anticipated as of the date such Transaction was entered into and which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of due diligence. With respect to Unit Specific RECs, Force Majeure includes events or circumstances described in the previous sentence that disrupt the operation of the specified Renewable Energy Facility. Force Majeure may not be based on (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; or (iii) Seller's ability to sell the Product to another at a price greater than the Purchase Price. Force Majeure may include a change in Applicable Law, except for Regulatorily Continuing Transactions, or the failure or disruption in Deliveries of any Certification Authority that is not the Claiming Party. In the case of a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

## **ARTICLE 7: GOVERNMENT ACTION**

The Parties acknowledge that the Applicable Programs, which among other things establish the conditions for a market for certain Products, may be the subject of Government Action (including court challenge) that could adversely affect the eligibility of a Product to meet the requirements of an Applicable Program or otherwise alter the requirements of the Applicable Program, or make a Product unavailable or dramatically diminished or increased in value. With respect to any Transaction, absent a representation by Seller that the Product complies with the requirements of a particular Applicable Program, Buyer bears the risk that the Product is or will be in compliance with any Applicable Program. With respect to any Transaction, if Seller represents that a Product complies with an Applicable Program, such representation is made and effective as of the Trade Date, and Seller will not be in breach of such representation on account of any Government Action occurring after the Trade Date, unless the Product is Regulatorily Continuing, in which case Seller must Deliver Product that complies with the Applicable Program as of the Delivery Date. Unless otherwise specifically specified in a particular Product Order, Government Action that changes in any respect the value of a Product (without rendering the Product out of compliance with the Applicable Program if Regulatorily Continuing), including a Cancellation of Applicable Program, will have no effect on the obligation of the Parties to purchase and sell such Product at the price and on the terms set forth in the Product Order. To the extent that Government Action renders Delivery illegal under Applicable Law, such Transaction will be terminated and that portion of whatever has been paid for Products not yet Delivered will be refunded by Seller, to the extent it is lawful to do so. Notwithstanding the foregoing, no Transaction will be affected, cancelled, or otherwise impaired by Government Action that is specific to a Party under Applicable Law taken by a Governmental Authority alleging that Party's violation thereof.

## **ARTICLE 8: GOVERNING LAW; STATUTE OF FRAUDS**

This Agreement is governed by and construed in accordance with the laws of the State as set forth

on the Cover Sheet; provided that the internal laws of the state establishing a Product stated to be in compliance with an Applicable Program governed by the laws of that state will govern with respect to such compliance. If this Agreement is said to be governed by New York law or California law, the Parties agree that this Agreement is a “qualified financial contract” within the meaning of New York General Obligations Law §5-701(b) or California Civil Code §1624(b)(2), respectively. The Parties acknowledge that if this Agreement is stated to be governed by the laws of a jurisdiction other than New York or California, that such other jurisdiction may not provide exemptions from the Statute of Frauds similar to those provided under the laws of New York and California, and that therefore in order for such Transaction to be enforceable, the Parties may need to put Transactions that will not be fully performed by a year from the Trade Date, or above a certain dollar amount, in a writing signed by both Parties. Unless a Party expressly objects at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between them, and agrees to retain such recordings in confidence, secured from improper access, and available to be submitted in evidence in any proceeding relating hereto, including as evidence that a contract has been made between them. Each Party waives any further notice of such recording, and agrees to notify and obtain any necessary consents from its officers and employees, and indemnify, defend and hold harmless the other Party from any liability arising from failure to obtain such consents. To the full extent permitted under Applicable Law, if the Parties have agreed on the terms of a Transaction, the Parties agree not to contest, or to enter any defense concerning the validity or enforceability of a Transaction on the grounds that the documentation for such Transaction fails to comply with the requirements of a jurisdiction’s Statute of Frauds or other Applicable Law requiring agreements to be written or signed.

## ARTICLE 9: MISCELLANEOUS

9.1 Term of Agreement. The term hereof commences on the Effective Date and remains in effect until terminated by either Party upon 30 days’ prior written notice; provided, however, that such termination will not affect any Transaction entered into and not yet fully, faithfully, and indefeasibly performed as of such termination, or excuse the performance of either Party under any provision hereof that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder will remain in effect with respect to the Transactions entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transactions if such Transactions have not been terminated under Article 5 or 7.

9.2 Assignment. Neither Party may assign this Agreement or any Transaction without the prior written consent of the other, which consent will not be unreasonably withheld; provided, however, either Party may, without the consent of the other, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (and without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party on the Effective Date, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party on the Effective Date; provided, however, that in each such case, any such assignee must agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party must deliver such tax and enforceability assurance as the non-transferring Party may reasonably request. This Agreement will bind each Party’s successors and permitted assigns. Any attempted assignment in violation of this provision will be void *ab initio*.

9.3 Notices. All notices, requests, statements or payments will be made as specified in the Cover Sheet. Notices, unless otherwise specified herein, must be in writing and delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery is effective when actually received, if received before or during business hours on a Business Day, and otherwise will be effective on the next Business Day. Notice by overnight United States mail or courier

will be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

9.4 Day Conventions. Unless otherwise specifically provided herein or in a Product Order, (i) “day” means a calendar day and includes Saturdays, Sundays and holidays, and (ii) if a payment falls due on a day that is not a Business Day, the payment will be due on the next Business Day thereafter.

9.5 General. (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Any prior agreement or negotiation between the Parties with respect to the subject hereof is superseded. Any Product Order or any collateral, credit support or margin agreement or similar arrangement between the Parties will, upon designation by the Parties, be deemed part hereof and incorporated herein by reference, with this Agreement controlling in the event of a contradiction.

(b) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and not be construed against one Party or the other as a result of the preparation, substitution, organizational membership, submission or other event of negotiation, drafting or execution hereof.

(c) No amendment or modification hereto or to any written Product Order is enforceable unless in writing and executed by both Parties.

(d) Headings used herein are for convenience and reference purposes only.

(e) Nothing herein constitutes any Party a partner, agent or legal representative of the other Party or creates any fiduciary relationship between them.

(f) The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach will not operate as a waiver of any default or breach.

(g) Except as provided in a Product Order or pursuant to Article 7, if any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

(h) This Agreement may be executed in counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same original instrument.

9.6 Electronic Documents. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

9.7 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section applicable, neither Party will disclose the terms or conditions of a Transaction or this Agreement to a third party (other than the Party’s employees, Guarantor, lenders, counsel, accountants, agents or advisors who have to know such information and have agreed to keep such terms confidential) except: (a) in order to comply with any applicable law or regulation, or request of any regulatory agency having colorable jurisdiction over the Party and requesting the confidential information in the ordinary course of business, (b) rule or requirement of any exchange, Certification Authority, Administrator or Governmental Authority administering an RPS; (c) in connection with any court or regulatory proceeding; (d) Transaction

information delivered to a Verification Provider as specified in a Product Order; and (e) to the extent such information is delivered to a third party for the sole purpose of calculating a published index or other published price source; provided, however, each Party will, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

9.8 Dispute Resolution. Disputes under this Agreement will be resolved in accordance with applicable law, or in accordance with the provisions of the Dispute Resolution Addenda selected on the Cover Sheet.

**Section 9.8**  
**Dispute Resolution Addenda**

**Waiver of Jury Trial**

Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

**Non-Binding Mediation**

- a) Negotiations. The Parties must attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 30 days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within 15 days after such referral, either Party may initiate a dispute resolution method as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section (2) below. All negotiations pursuant to this clause are confidential.
- b) Mediation. If the dispute is not resolved within 30 days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within 15 days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association (the “AAA”), as amended and effective on July 1, 2003 (the “AAA Rules”), notwithstanding any dollar amounts or dollar limitations contained therein.
- (i) The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“Mediation Notice”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.
- (ii) The mediation will be conducted at the place designated on the Cover Sheet by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five days after the date of the Mediation Notice, then the AAA’s Administrator will send a list and resumes of three available mediators to the Parties, each of whom will strike one name, and the remaining person will be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA’s Administrator within five days after receiving the list or because one or both Parties have failed to



strike a name from the list or because both Parties strike the same name, the AAA's Administrator will choose the mediator from the remaining names within five days. If the designated mediator dies, becomes incapable, unwilling, or unable to serve or proceed with the mediation, a substitute mediator will be appointed in accordance with the selection procedure described above, and such substitute mediator will have all such powers as if he or she has been originally appointed herein.

(iii) The mediation will consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process will continue until the resolution of the dispute, or the termination of the mediation process pursuant to this Section. The costs of the mediation, including fees and expenses, will be borne equally by the Parties.

(iv) All verbal and written communications between the Parties and issued or prepared in connection with this Section will be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and will be exempt from discovery and production, and will not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(v) The initial mediation conference between the Parties and the mediator, which may be held by telephone, will be held within 25 days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation conference to occur within 25 days after the date of the Mediation Notice, (B) the passage of 45 days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(vi) All deadlines in this Section may be extended by mutual agreement.

- c) Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, will be promptly returned to the Party providing the same.

### **Binding Arbitration**

(1) Any dispute or claim arising out of or related hereto or any breach thereof or any need for interpretation related to any dispute arising out of or related hereto will be settled by binding arbitration administered by the American Arbitration Association at the place designated on the Cover Sheet. Either Party will have the right to commence an arbitration by written notice to the other Party after the expiration of a 30 day negotiation period, or if nonbinding mediation was designated in the Cover Sheet, 10 days after the termination of the mediation. The arbitration will be conducted as follows:

(A) There will be one arbitrator who has not previously been employed by either Party, is qualified by education or experience to decide the matters relating to the questions in dispute, and does not have a direct or indirect interest in either Party or a financial interest in the outcome of the arbitration and who is available within the time frames set forth herein. Such arbitrator will either be selected by mutual agreement by the Parties within 30 days after written notice from the Party requesting arbitration, or failing agreement by such time, the arbitrator will be selected within the following 14 days by the AAA under the AAA Rules.

(B) Such arbitration will be held at the location specified on the Cover Sheet. Absent

agreement, the arbitrator shall set the location of the arbitration based on where it is most convenient and cost effective to resolve the dispute, and if it is an international matter, with regard to any special considerations raised by the Parties that may therefore be relevant.

(C) The AAA Rules (including the Optional Rules for Emergency Protection Measures) apply to the extent not inconsistent with the rules herein specified. If the dispute is international in scope as defined in the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, the AAA's Supplementary Procedures for International Commercial Disputes shall apply.

(D) The hearing will be conducted on a confidential basis and except as required by law, neither the Parties nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all the parties.

(E) At the request of a Party, the arbitrator will have the discretion to order an examination of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions will be limited to a maximum of two depositions for each Party, may be held by video conferencing to reduce travel expenses, and each deposition limited to a maximum of three hours. All objections are reserved to the hearing except objections based on privilege and proprietary or confidential information.

(F) At the conclusion of the hearing, if Baseball Arbitration is selected on the Cover Sheet, each Party will submit a form of award to the arbitrator setting out its proposed resolution of the dispute or claim and the arbitrator must issue an award in accordance with only one or the other of the forms of award proposed by the Parties (popularly referred to as baseball arbitration); otherwise, the arbitrator will deliver an award consistent with the facts and the law and will not be limited to any forms of award proposed by the Parties; provided, that, the decision must resolve the dispute in a manner consistent with this Agreement.

(G) The arbitrator will issue a confidential award accompanied by a statement regarding the reasons for the decision.

(H) The arbitrator and the Parties will make every attempt to resolve the arbitration within 90 days of appointment. Upon the application of a Party and for good cause shown, the arbitrator may extend this time. Under no circumstances will the arbitration take longer than six months from the appointment of the arbitrator. However, failure to conclude the arbitration within the six month period will not constitute grounds for vacating the award.

(I) Each Party will be responsible for its own filing fees and case service fees in connection with its claim. Other expenses and arbitrator compensation will be borne equally, subject to final apportionment by the arbitrator. Each Party will be responsible for its own expenses and those of its counsel and representatives.

(J) Any offer made or the details of any negotiation regarding the dispute prior to arbitration and the cost to the Parties of their representatives and counsel will not be admissible.

(2) Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction by the Party in whose favor such award is made.

(3) Regardless of any procedures or rules of the AAA: (i) the arbitrator will have no authority to award punitive damages, or any other form of damages waived by the Parties pursuant to the Agreement, or attorneys' fees; and (ii) the Parties may by written agreement alter any time deadline, locations for meetings, or procedure outlined in this Section or in the AAA Rules, except that the provisions of subsection (1)(H) above will govern with respect to the time frame for the conclusion of the arbitration.

## **SCHEDULE P: PRODUCT ORDER DEFINED TERMS**

“Standard REC” means a REC that includes all Environmental Attributes arising as a result of the generation of electricity associated with the REC, whether or not such Environmental Attributes have been Verified or Certified and whether or not creditable under any existing Applicable Program.

“Basic REC” means a REC that consists solely of a Certification of the generation of electricity by a Renewable Energy Resource, without any additional Environmental Attributes.

“Specified REC” means a REC that includes specified Environmental Attributes in addition to the generation of electricity by a Renewable Resource. Additional Environmental attributes may be specified individually or as the residue after specific Environmental Attributes are removed.

“Unit Specific” when referring to Product means that the Renewable Energy Facility that has generated or is eligible to generate the Product is and must be specified.

“Unit Non-specific” when referring to Product means that the Renewable Energy Facility that has generated or is eligible to generate the Product need not be specified.

“Unit Contingent” means that Seller is excused from any failure to Deliver Product quantity on account of failure of a specified Renewable Energy Facility to generate the amount of RECs necessary in the Vintage or other time period indicated. In such event, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article 5.

“Generation Contingent” means Seller’s failure to Deliver is excused if the Renewable Energy Facility for any reason does not generate sufficient measured energy in the Vintage or other time period indicated to satisfy all obligations of RECs delivery assigned by Seller to the Renewable Energy Facility. In such event, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article 5.

“Mid-Year Vintage” or “PJM Reporting Year” means the twelve-month period from June 1st through May 31st. A reporting year shall be numbered according to the calendar year in which it ends, so that reporting year 2007 runs from June 1, 2006 through May 31, 2007.

**EXHIBIT A: EXAMPLE PRODUCT ORDER WITH DISCLOSURE DOCUMENT**

(THIS EXHIBIT IS NOT APPLICABLE)

**Each Product Order is for a single Transaction, which may include multiple deliveries of a single Product and, accordingly, multiple Vintages. A Product includes one or more Environmental Attributes. If the Product is Unit Specific, the Renewable Energy Facilities that generate it must be specified. Part A of this Product Order primarily relates to the specification and Certification of RECs, and Part B, the Disclosure Document, primarily relates to Verification of Environmental Attributes. Seller warrants the accuracy and completeness of the matters set forth herein.**

**Part A. Transaction and its Certification**

The following describes a Transaction between Buyer and Seller for the sale, purchase and delivery of Product pursuant to the terms of the Master Renewable Energy Certificate Purchase and Sale Agreement between them dated [ ] (the “Agreement”). Initially capitalized terms used and not otherwise defined herein are defined in the Agreement and Schedule P.

- Deliveries and Quantity.** On each Delivery Date set forth in the table, Seller will deliver the quantity of the Product (as defined below) having Vintages as and if specified, and Buyer will pay the specified Purchase Price, all in accordance with the Agreement.

REC Delivery	Delivery Dates (indicate dates or as generated, as applicable)	Delivery Type (indicate multiple/periodic deliveries, if applicable)	Quantity (in MWhrs, unless otherwise indicated)	Vintage (month/year, as applicable)	Purchase Price (\$ per MWhr unless otherwise indicated)
Delivery 1					
Delivery 2					
Delivery 3					

- Environmental Attributes and Verification (Go to Part B as applicable).** The Product is:

Standard RECs (see Schedule P)  
 Basic RECs.  
 Specified REC; complete Part B.  
 otherwise requires separate Verification as set forth on Part B.  
 other:\_\_\_\_\_.

- Facility Information.** The Product is:

Renewable Energy Facility or Unit Specific; if so, complete the following:

Name of Facility	Location of Facility	EIA number	Online Date

Renewable Energy Source specific; if so, state: \_\_\_\_\_

Aggregator area specific. Use the following table for generator aggregation programs:

REC Delivery	Unit Specific Generating Renewable Energy Unit / Renewable Energy Source	Generating Renewable Energy Aggregation Program / Renewable Energy Sources	Location of Generator or Area of Aggregation
Delivery 1			
Delivery 2			
Delivery 3			

4. **Certifications.** The Product is:

RECs GIS serial numbers if applicable: \_\_\_\_\_  
 All Certification Authorities for the REC applicable: \_\_\_\_\_  
 eligible for the RPS program in the following jurisdictions (by checking this box the Seller warrants, as of the Trade Date, that the Product meets all the requirements of the Applicable Program for compliance as in effect on the Trade Date, including, if applicable, Vintage and where the associated energy has been delivered):

REC Delivery	RPS Program	Compliance Value Bonus or Reduction (if applicable)	Other Characteristics	Certified by [Certification Authority]
Delivery 1				
Delivery 2				
Delivery 3				

5. **Risk Allocation.** The Product is:

Regulatorily Continuing. Check only if applicable; if checked, “as of the Trade Date” in the proceeding representation is replaced with “as of the Delivery Date”.  
 Unit Contingent (only check if applicable)  
 Generation Contingent (only check if applicable)

The parties agree to the Transaction set forth herein.

[Seller]

[Buyer]

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

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

**[Remainder may be deleted.]**  
**Continue to Part B, as applicable. Use additional sheets as necessary**

**Exhibit A / Part B – Renewable Energy Certificate Disclosure Document**  
for Delivery number \_\_\_\_\_ (corresponding to Delivery numbers specified in Part A)

*If the transaction entails multiple REC Deliveries, fill out a separate Part B for each Delivery. All specifications and claims described here in Part B refer only to the specified Delivery.*

**1**

**Standard REC, Claims to all Environmental Attributes present, unverified and being Delivered\***

***If checked, stop and proceed to Transfer Certificate***

\* Depending on location unverified Environmental Attributes may approach zero in magnitude or be zero.

**Or**

**2**

**Basic REC, Generation/Generator diversity attributes only, Claims to all Environmental Attributes are not transferred or Delivered**

***If checked, stop and proceed to Transfer Certificate***

**3**

**Specified REC**

Check this box, and the appropriate box(es) below, to indicate a verified Environmental Attribute, only checked boxes represent verified Environmental Attributes, all not checked as verified are deemed to be unverified and transferred to Buyer unless noted directly below.

Displaced CO<sub>2</sub>e or other greenhouse gas emissions

Displaced NO<sub>x</sub> emissions

Displaced \_\_\_\_\_

Displaced Hg emissions

Displaced PM emissions

Displaced SO<sub>2</sub> emissions

Displaced or reduced land resource impacts

**NOTE: Select only one REC type/track in Boxes 1, 2, or 3 (follow all arrows, check all applicable boxes and fill out all applicable fields to complete track 3)**

**B.1.a**

**Environmental Attribute Verification Specifications for Displaced \_\_\_\_\_ Emissions or Impacts\*\*\***

Verification Provider \_\_\_\_\_

Verification Methodology\*\* \_\_\_\_\_

Date of Environmental Attribute Verification/Quantity of Verified Displacement• \_\_\_\_\_

\*\* Planning models, dispatch models, E-grid, etc.  
\*\*\* See Annex to include verification specifications for additional Environmental Attributes.

**B.1.b**

**Environmental Attribute Verification Specifications for Direct Reduction of \_\_\_\_\_ Emissions or Impacts\*\*\***

Verification Provider \_\_\_\_\_

Verification Methodology – attach separate form to Part \_\_\_\_\_

**B.2.a**

**Verified Environmental Attribute Status**

Present and being Delivered

**OR**

Present and being retained by Seller

**OR**

Previously retired by Seller on \_\_\_\_\_ [date]

**OR**

Previously transferred on \_\_\_\_\_ [date] to \_\_\_\_\_

**OR**

Exchanged with Applicable Program for other environmental instrument

**B.2.b**

**Verified Environmental Attribute Status**

Present and being Delivered

**OR**

Present and being retained by Seller

**OR**

Previously retired by Seller on \_\_\_\_\_ [date]

**OR**

Previously transferred on \_\_\_\_\_ [date] to \_\_\_\_\_

**OR**

Exchanged with Applicable Program for other environmental instrument

**B.3.a/b**

**Non-RPS Applicable Program assets associated with REC Delivery**  
(leave boxes unchecked if none applicable and this is currently a voluntary market transaction, use Annex 2 for additional non-RPS Applicable Program Asset details)

**Carbon market allocation to specific unit or aggregation program associated with REC Delivery**

Official Federal and/or State/Regional approval by \_\_\_\_\_ for \_\_\_\_\_ [number] of \_\_\_\_\_ [allowances] for the \_\_\_\_\_ [program] on \_\_\_\_\_ [date]. List serial numbers of tradeable instruments/allowances in Annex.

**Carbon market offset credit/offset allowance granted to specific unit or aggregation program associated with REC Delivery**

Official Federal and/or State/Regional approval by \_\_\_\_\_ for \_\_\_\_\_ [number] of \_\_\_\_\_ [offset credits/offset allowances] for the \_\_\_\_\_ [program] on \_\_\_\_\_ [date]. List serial numbers of tradeable instruments/offset credits or allowances in Annex.

**Other Applicable Program instruments**  
(e.g. Clean Air Act SIP credit, nutrient loading/water credits)

Official Federal and/or State/Regional approval for \_\_\_\_\_ [number] of \_\_\_\_\_ [tradeable instruments] for the \_\_\_\_\_ [program] as displaced and/or reduced \_\_\_\_\_ emissions or impacts on \_\_\_\_\_ [date]. List serial numbers of tradeable instruments in Annex.

***Proceed to Transfer Certificate***

**Unverified Environmental Attributes not being Transferred or Delivered by Seller**

Unless indicated above as verified, only the following unverified Environmental Attributes listed below (including all claims, assets and future tradeable instruments, both voluntary and regulatory, related to the unverified attribute) are not being transferred or Delivered by Seller:

\_\_\_\_\_

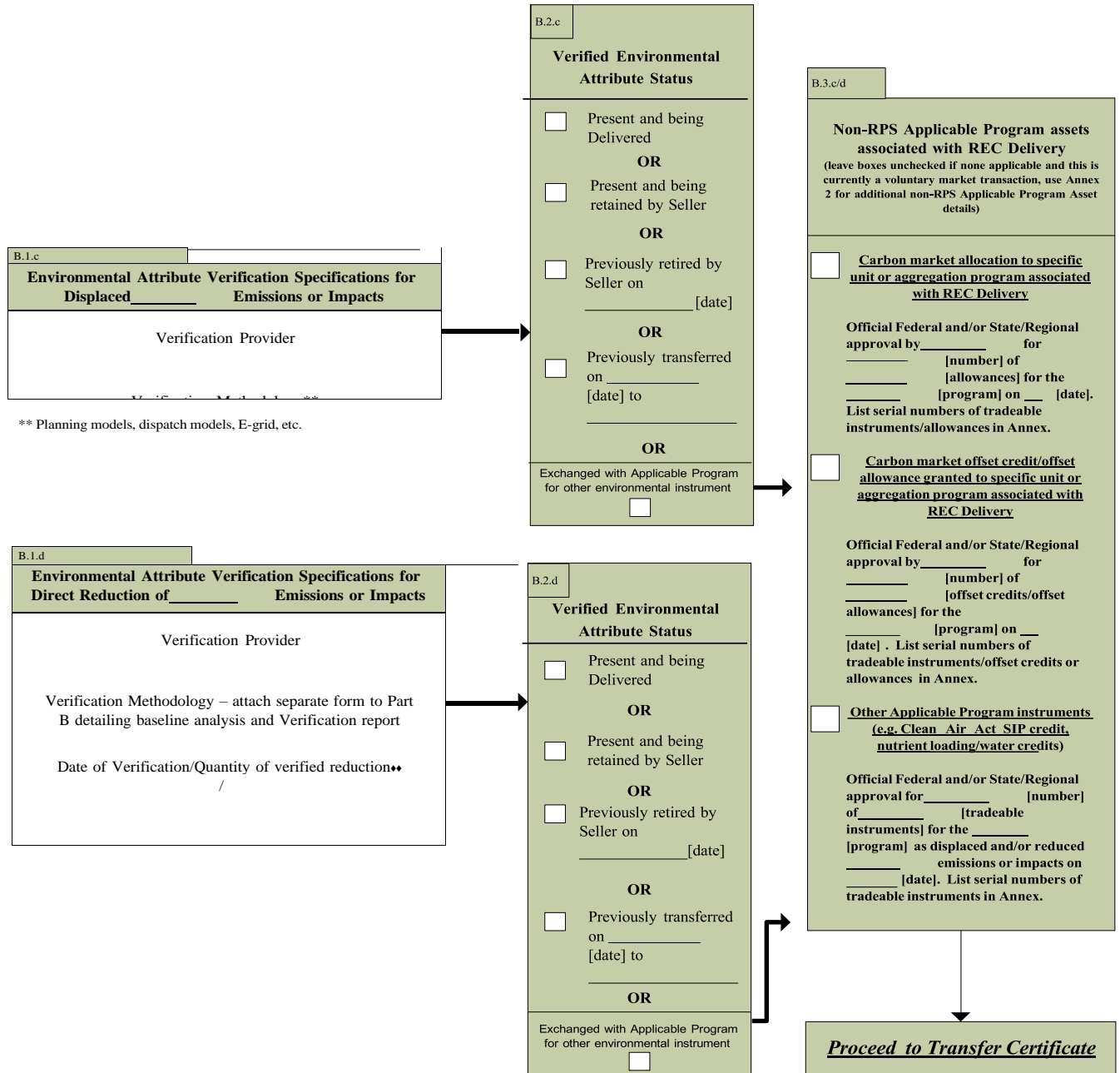
\_\_\_\_\_

\_\_\_\_\_

∞ For example landfill gas methane capture or other renewable energy projects that create direct emissions reductions. Note that Displacement refers to indirect emissions reductions.

◆◆ If Environmental Attribute Verification has not occurred, enter planned future date of Verification. This written form must be finalized and sent to both Parties no later than ten days following completion of the future Verification. Unless otherwise agreed, Seller is responsible for the costs of Verification up to the REC Delivery Date with the Buyer responsible for Verification post-Delivery, the Seller retains responsibility to offer reasonable assistance to the Buyer as set forth in the Agreement.

**Annex to Part B**



\*\* Planning models, dispatch models, E-grid, etc.

◇◇ For example landfill gas methane capture or other Renewable Energy Source that creates direct emissions reductions.

◆◆ If Environmental Attribute Verification has not occurred, enter planned future date of Verification. This written form must be finalized and sent to both Parties no later than ten days following completion the future Verification. Unless otherwise agreed, Seller is responsible for the costs of Verification up to the REC Delivery Date with the Buyer responsible for Verification post-Delivery, the Seller retains responsibility to offer reasonable assistance to the Buyer as set forth in the Agreement.

**B.3 Extra**

If applicable, specify generating renewable energy aggregation program, with location of generator or areas of aggregation, and Certification Authority:

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**B.3.Extra**

Non-RPS Applicable Program or environmental regulatory market additional details

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Schedule B.3 Serial Numbers	Tradeable environmental instrument type	Set aside or other source of tradeable environmental instrument	Serial Number
Tradeable environmental instrument # 1			
Tradeable environmental instrument # 2			
Tradeable environmental instrument # 3			
Tradeable environmental instrument # 4			

**B.3 SIP Credit - Clean Air Act State Implementation Plan (SIP) Credit for Renewable Energy Emission Reduction Measures◆**

No emissions trading system present for Verified as displaced \_\_\_\_\_ emissions

Official approval of renewable energy emissions reduction measure by EPA and the State of \_\_\_\_\_, on \_\_\_\_\_ [date].

OR

Emissions trading system present for Verified as displaced \_\_\_\_\_ emissions

Official approval of renewable energy emissions reduction measure by EPA and the State of \_\_\_\_\_, on \_\_\_\_\_ [date], with commensurate retirement of \_\_\_\_\_ [number] of relevant emissions allowances from \_\_\_\_\_ [set aside or other allowance source], with allowance serial numbers listed in B.3.

◆ For SIP Credit, the Renewable Energy Facility producing RECs may not already be accounted for in the SIP attainment demonstration and the emissions that are being displaced must be included in the inventory used for the attainment demonstration and the emissions being displaced must be shown to impact the non-attainment area.



**EXHIBIT B: EXAMPLE PRODUCT ORDER WITHOUT DISCLOSURE DOCUMENT**

(THIS EXHIBIT IS NOT APPLICABLE)

**Renewable Energy Certificates CONFIRMATION**

To:

\_\_\_\_\_

From:

Confirmation Administration

The following describes the terms of a proposed transaction between Buyer and Seller for the sale, purchase and delivery of Renewable Energy Certificates (“RECs”) pursuant to the terms of the Master Renewable Energy Certificates Purchase and Sale Agreement (the “Agreement”) between them dated [ ]. Initially capitalized terms used and not otherwise defined herein are defined in the Agreement and Schedule P.

Trade Date \_\_\_\_\_ Seller: \_

\_\_\_\_\_ Buyer: \_

\_\_\_\_\_ Type of Product:

( ) Standard RECs

( ) Generation Contingent

1. Amount: Number of RECs: \_\_\_\_\_ MWh
2. Vintage: \_\_\_\_\_.
3. Price: \$ \_\_\_\_\_/MWh for RECs.
4. Delivery Date: \_\_\_\_\_.
5. Method of Transfer: \_\_\_\_\_ Attestation \_\_\_\_\_ GIS REC tracking system, specified as \_\_\_\_\_ Serial number \_\_\_\_\_ (if applicable).
6. Renewable Energy Facility: \_\_\_\_\_ Renewable Energy Source \_\_\_\_\_
7. Seller represents that these RECs are compliant with the following Applicable Programs: \_\_\_\_\_ [list] as of the Trade Date or, ( ) [check only if applicable] Regulatorily Continuing and as of the Delivery Date.

The parties agree to the Transaction set forth herein.

[Seller]

[Buyer]

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

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

**Renewable Energy Certificate Record Keeping:** Seller will deliver, to the extent applicable, the Attestation and Disclosure Document, in a form similar to that attached hereto, or in such other form as may be required from time to time by such Certification Authority or as may from time to time be mutually agreed to by the Parties pursuant to the terms of the Applicable Program.

**EXHIBIT C**

(THIS EXHIBIT IS NOT APPLICABLE)

**EXAMPLE ATTESTATION**

I, \_\_\_\_\_, as the authorized representative of [Company Name] (“Seller”) declare that Seller hereby sells, transfers and delivers to Buyer the Product (including, unless otherwise specified, all Environmental Attributes and Product Reporting Rights) associated with the generation and delivery of energy to Buyer from the Renewable Energy Facility as described below, in the amount of one REC for each megawatt hour generated as Delivery of [Product], as said term is defined in the Product Order with a Trade Date of \_\_\_\_\_, 20\_\_ with Buyer pursuant to a Master Renewable Energy Certificate Purchase and Sale Agreement (the “Agreement”) with Buyer dated \_ (initially capitalized terms defined in the Agreement and Schedule P thereto), and that the RECs sold hereunder:

1. were generated by the following Renewable Energy Facilities and sold, subject to receipt of payment, to Buyer;
2. qualify as [Product] as of the Trade Date;
3. are solely and exclusively owned by Seller;
4. The have not been used by Seller or any third party to meet the RPS or other Applicable Program requirements in another state or jurisdiction;
5. were delivered into the [Delivery Area (e.g. PJM Control Area (as defined by PJM))] and complied with [PJM] energy delivery rules;
6. were not sold to any end-use customer or other wholesale provider other than Buyer during the calendar/Reporting Year; and,
7. were not used on-site for generation.

Generator Name or Designation	Technology Type	Fuel Type	Generator Location	EIA #	[Product]	Start and End Dates

\* must conform to the Product Order

As an authorized representative of Seller, I state that the above statements are true and correct to the best of my knowledge. This Attestation may serve as a Bill of Sale to confirm, in accordance with the Agreement, the transfer from Seller to Buyer all of Seller’s right, title and interest in and to the Product as set forth above.

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

Date \_\_\_\_\_  
[notarize if required]

This Attestation may be disclosed by Seller and Buyer to others, including the Administrator, Verification Provider, Certification Authority and the public utility commissions having jurisdiction over Buyer, to substantiate and verify the accuracy of the Parties’ compliance, advertising and public claims.

**EXHIBIT D**

(THIS EXHIBIT IS NOT APPLICABLE)

**EXAMPLE ATTESTATION**

I, (print name and title) \_\_\_\_\_, declare that the (indicate with “x”)<sup>1</sup> \_\_\_ electricity/ \_\_\_ renewable attributes listed below were sold exclusively from: (name of Wholesale Provider) \_\_\_\_\_ to: (name of REC provider, utility, or electric service provider [“Purchaser”]) \_\_\_\_\_. Further, I declare that:

- 1) all the Environmental Attributes, including any emissions reduction credits or emissions allowances, represented by the renewable electricity generation listed below are transferred to the Purchaser above,
- 2) to the best of my knowledge, the Environmental Attributes were not sold, marketed or otherwise claimed by a third party;
- 3) (Wholesale Provider) \_\_\_\_\_ sold the renewable attributes only once;
- 4) the Environmental Attributes or the electricity that was generated with the attributes was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by (Wholesale Provider), \_\_\_\_\_ nor, to the best of my knowledge, any other entity; and
- 5) the electrical energy that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by (Wholesale Provider), \_\_\_\_\_ or, to the best of my knowledge, any other entity.

Further, I declare that the facilities that generated all of the (indicate with “x”) \_ electricity/ \_

renewable attributes sold to (Purchaser) \_\_\_\_\_ are listed below by fuel type. NO<sub>x</sub>, SO<sub>2</sub>, and CO<sub>2</sub> emissions information is provided for all fossil-fueled generation, and NO<sub>x</sub> emission information is also provided for biomass, landfill gas and digester gas generation as required.<sup>2</sup>

Generator Name	Generator ID Number	Fuel Type (if biomass, list fuel)	# MWhs TRCs / Power Sold	1 <sup>st</sup> Date of Generator Operation (mm/yy) <sup>3</sup>	NO <sub>x</sub> Emissions (Lbs/MWh)	SO <sub>2</sub> Emissions (Lbs/MWh)	CO <sub>2</sub> Emissions (Lbs/MWh)	Period of Generation (Q#/yy or mm/yy) <sup>4</sup>
Jane’s Wind Farm		Wind	10	1/1/1997	None			Q1/2004

As an authorized agent of (Wholesale Provider) \_\_\_\_\_, I

attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

**Additional statement required of provider selling electricity.**

**I declare that the electricity listed above was delivered into the regional grid as follows:**

- **PJM, PA, OH, IL, MI, or VA for sales in PA, NJ, MD, DC, DE, and VA;**
- **ECAR for sales in OH;**
- **ISO New England for sales in CT, VT, NH, ME, RI, and MA;**
- **WECC for sales in CA, OR, WA and ID; and**
- **NY ISO for sales in NY.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

<sup>1</sup> Use separate forms to report electricity and TRC sales.

<sup>2</sup> Annual energy weighted average NO<sub>x</sub> Emissions data is required for Landfill Gas generation resources located in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Minnesota, Georgia and North Carolina. Annual energy weighted average NO<sub>x</sub> Emissions data is required for digester Gas generation resources located in New York, Minnesota, Georgia and North Carolina. Annual energy weighted average NO<sub>x</sub> emissions data is required for all other eligible biomass resources located in: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Maryland, District of Columbia, Pennsylvania, Delaware, Virginia, Minnesota, Georgia and North Carolina.

<sup>3</sup> For facilities that have added new renewable capacity, please indicate the amount and operational date of the new capacity and the existing capacity.

<sup>4</sup> List as separate line items MWh generated in each quarter.

## **GUIDANCE NOTES**

(THE GUIDANCE NOTES ARE NOT APPLICABLE)

### **Applicable Programs**

Parties should satisfy themselves that the Product that they are buying and selling, and the manner of transacting, meets the definition, delivery and other requirements of the Applicable Program. The drafters of this contract make no warranty or representation either way. For your convenience, a list of some Applicable Program websites with information concerning compliance is posted at <http://environmentalmarkets.org/>. Note that these programs are constantly under revision and development; this very contract is offered with the hope of assisting these Applicable Programs in developing consistent and acceptable definitions. Accordingly, parties should review the statutory and regulatory language of the Applicable Program to ensure that the Product delivered complies with the requirements. For example, the defined term “Standard RECs” as used in this contract is intended (but not guaranteed) to meet the definitional requirements of California programs for Renewable Energy Facilities that are certified as complying with the California Energy Commission requirements, once RECs trading is implemented pursuant to recent amendments to the statute authorizing the RPS, because Standard RECs means all Environmental Attributes, whether or not verified. Here is the current standard contract term in California:

“Environmental Attributes or Green Tags” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Unit(s), and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other Party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller’s Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility.

As this definition is used in the Master Renewable Energy Certificate Purchase and Sale Agreement, “Units” means Renewable Energy Facilities, and “Green Tag Reporting Rights” mean Product Reporting Rights. Note also California Public Utilities Code §399.12(g):

(1) “Renewable energy credit” means a certificate of proof, issued through WREGIS, that one unit of electricity was generated and delivered by an eligible renewable energy resource. (2) “Renewable energy credit” includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the California Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

The working group considered but rejected the concept of adding to this contract the definitions of each state, choosing instead to pursue the approach of defining the Product, and allowing the Parties to make a representation that the Product complies with the requirement of an Applicable Program

(and hence the controlling State law). The risks of fostering Balkanization with too many disparate definitions was overwhelming, and the working group instead chose to draft definitions that emphasize commonalities of the Products and Environmental Attributes, and under which RPS programs they qualify.

The Parties should also comply with the Delivery requirements of the Applicable Program. For example in NEPOOL-GIS delivery contracts for REC purchases, the delivery could be either a non-revocable forward delivery, a revocable forward delivery, or trading period delivery, as these are all permitted by the NEPOOL-GIS Operating Rules. This should be worked out in contract negotiations and expressed in the Product Order by selection of the “Delivery Type”. A voluntary credits transaction is mainly a financial transaction that may employ Green-e verification or attestations if required, which can also be worked out as a “delivery type” as well. Here is example language parties have used in contracts that either use NEPOOL or PJM facilitate a REC transfer, to illustrate.

#### **Transactions within NEPOOL:**

**Title Transfer: Delivery.** The Parties have chosen a Delivery Schedule of either Trading Period, Forward Certificate Delivery, or Non-revocable Forward Certificate Delivery, as stated in Delivery Schedule. In addition, the Parties agree to follow the specific Delivery rules applicable to the chosen Delivery Schedule, pursuant to Part 3 Transfer of Certificates of the NEPOOL GIS Operating Rules. The Delivery rules for Trading Period, Forward Certificate Delivery, or Non-revocable Forward Certificate Delivery:

**Trading Period:** Quarterly within five business days of the close of the applicable quarterly trading period, Seller shall Deliver Designated RECs into the NE-GIS account of the Buyer. As pursuant to Part 2 Rule 2.1 (b) of the NEPOOL- GIS Operating Rules, Certificates are created quarterly on the 15<sup>th</sup> day of the calendar quarter (the Creation Date) that is the second calendar quarter following the calendar quarter in which the Energy associated with the Certificate was generated. Each Certificate shall be eligible for transfer from its Creation Date; such Certificate shall cease to be eligible for transfer 15 days prior to the end of the calendar quarter in which such Creation Date occurs.

**Forward Certificate:** Monthly within 25 business days after the close of each generation month, the Seller shall Deliver Designated RECS by initiating a forward transfers to the NE-GIS account of the Buyer. The forward transfer of the Designated RECs shall represent a transfer of and valid title to such Designated RECs free and clear of any lien or other encumbrance. Forward Certificates can be rescinded up to five calendar days prior to the corresponding Creation Date of the Forward Certificate

**Non-revocable Forward Certificate:** Monthly within 25 business days after the close of each generation month, the Seller shall Deliver Designated RECS by initiating non-revocable forward transfers to the NE-GIS account of the Buyer. The non-revocable forward transfer of the Designated RECs shall represent a transfer of and valid title to such Designated RECs free and clear of any lien or other encumbrance.

#### **Transactions within PJM-GATS**

**Title Transfer: Delivery** The Parties agree to follow the specific delivery rules pursuant to Section 9 Transfer of Certificates of the PJM GATS Operating Rules. Monthly within 45 business days of certificate creation date, the Seller shall Deliver Designated GATS Certificates by initiating transfer to the PJM-GATS account of the Buyer, as pursuant to Section 9.1 entitled *Transferring Certificates between Account Holders* of the PJM-GATS Operating Rules. Certificates are created monthly on the last business day of the calendar month following the month of generation (the Creation Date). Each Certificate shall be eligible for transfer from its initial deposit into a GATS Account; such Certificate shall cease to be eligible for transfer at the end of the Trading Period of the corresponding Reporting Period in which the Creation Date occurs. The transfer of the Designated GATS Certificates shall represent a transfer of and valid title to such Designated GATS Certificates free and clear of any lien or other encumbrance. All GATS Certificate transfers will be complete by the close of the applicable PJM-GATS Trading Period

#### **Change in Law Risks**

The concept of “Regulatorily Continuing” as a representation is discussed in the Introduction for Users and figures prominently in Section 3.2 and Article 7. Additionally, the Parties are required to continue with the delivery of Product at the purchase price agreed to in the Transaction, even if the RPS is cancelled, and there is no “price majeure” if a voluntary program’s RECs suddenly become more valuable due to a promulgation of a new RPS. Parties might want to vary this in one of two ways. Those active in compliance markets might wish for an out (akin to the “Change in Scheme” concept sometimes seen in

documentation for the European Emissions Trading Scheme). Here is an example provided by a working group member, which is New Jersey specific; “Product” in this clause refers to “S-RECs”, which would be the specified Product in the particular Transaction:

**Change in Law and Termination.** The Parties recognize and understand that the trading of [the Product] is dependent upon Applicable Law existing as of the Effective Date. If, after the Effective Date, (1) the Administrator issues an order discontinuing Certification of [the Product]; or (2) there occurs any material change (including promulgation, enactment, repeal and amendment) in the application of, Applicable Law, including any material change by any state governmental authority or PJM regarding a Party’s authority to sell or purchase [the Product] (both (1) and (2) being a “Change in Applicable Law”) and such Change in Applicable Law either (i) renders this Transaction illegal or unenforceable, (ii) would render performance by a Party illegal or unenforceable, (iii) eliminates, abolishes or makes illegal the trading or transferring of [the Product], or (iv) eliminates the RPS requirement as separate and apart from, or [the Product] no longer qualifies as meeting, [the Class I requirement in New Jersey], then promptly after such Change in Applicable Law occurs, the Parties will use their commercially reasonable efforts to reform the Transactions in order to give effect to the original intention of the Parties. Prior to termination of the applicable Transactions, if [the Product] is (i) deliverable to any other jurisdiction with a [Product] requirement, (ii) and qualifies to meet such state’s requirements, the Parties will reform the Transactions to reflect such deliverability. If, in the Buyer’s sole discretion, the Parties are unable to reform the Transactions as described above, Buyer may, at its sole option and at any time following the Change in Applicable Law, terminate the applicable Transactions without terminating the remainder of this Agreement and calculate a Termination Payment, which for the purposes of this Section only will be calculated as the amount of Quantity remaining to be delivered in the then-current Compliance Year, multiplied by [\$175]. If the Buyer elects to terminate the Applicable Transactions, the Termination Payment hereunder will supersede any termination payment specified under Article 5 and no such termination payment will be due and owing under such article for such Transactions.

And, parties transacting in a voluntary market may wish to cancel the Transaction should the RECs market suddenly become a compliance market, which could have a substantial impact on the value of the RECs. Here is an example clause.

If, prior to the delivery of RECs sold hereunder, any Applicable Law is promulgated that has the effect of substantially alters the value of RECs, by making them newly capable of compliance with any particular Applicable Program, Seller may terminate said Transactions without penalty on thirty days’ prior written notice to Buyer. In such event, Seller will not deliver, and Buyer will not pay for, RECs that have not been delivered on or before the date of such termination, but Buyer will pay for RECs that have been delivered.

Parties considering use of either clause or the concepts therein should be sure to effectively further amend applicable provisions of the Agreement, with particular attention to Articles 6, 7 and 8.

### **Future Allowances**

Parties are transacting in a milieu in which rules are often not yet fully set and likely to change mid-stream. The only thing certain about change in law risks is that there will be change in law risks that the drafters did not anticipate. One possible change in law risk that the parties may wish to consider is the potential for future programs providing allowances to renewable energy facilities based on facility capacity, but not generation. This is distinct from credits (or allowances) provided on account of actual renewable resource generation. A “Standard REC,” which is “all” Environmental Attributes, includes within it any future allowances (or credits) that are awarded based on the measured quantity of generation with which the Standard REC was associated. If the parties do not wish to transfer future potential allowances or credits, they should elect to trade a “Specified REC” and use the Disclosure Document to carve those out.

The working group included all such future allowances or benefits associated with generation with a Standard REC, viewing the sale of the Standard REC as a derivative of the energy, with the Standard REC buyer being the fixed price payor. Although the Standard REC seller is not paying a floating price, it is receiving a steady and fixed, defined cash flow that it can use to ensure the economics of its project, and foregoing the floating price (which the buyer is receiving), which is the fluctuation in any future value inherent in what was sold for that fixed price. That floating value may increase if there is a new program, or decline if an existing program is cancelled. Meanwhile, the seller continues to receive the fixed price from the seller. This illustration is, of course, subject to the further elections and decisions of the parties in how they allocate change in law risk. So if, for example, under the new California

greenhouse gas emissions law, an allowance-based compliance regime is created and initial allowances are allocated to all existing generation, fossil and non-fossil fueled generation, and these allowances are allocated in an aggregate amount, and for example a wind facility is given in a table 100 Carbon Allowances, which it does not need for compliance, has the wind facility which sold a Standard REC sold any of its carbon allowances? If the allowances were for identifiable prior generation, and a buyer paid for them, they were transferred. If the allocation of allowances is made on an on-going future basis, as electricity is generated, and the amount of allowances is keyed to actual energy production, the allowances are part of the Standard REC. But the allocation of allowances is based on historic output of the unit does not result in the transfer of the allowances to those to whom the past performance was sold. A system which allocates allowances based on some formula other than on-going actual generation of energy is very different from a system that gives credit for displacing emissions based on actual generation of energy from a renewable resource. The drafters have sought to be as clear as possible under the circumstances, but the parties are advised to remain informed about the potential for future allowance and credit-based programs which might apply to their units and draft their transactions accordingly. Parties may consider adding the following language to the definition of Environmental Attributes:

Environmental Attributes do not include, unless the parties have expressly agreed otherwise, tradable emission allowances or other entitlements to produce emissions issued by a Governmental Authority and allocated to a Renewable Energy Facility on a basis other than actual generation of avoided emissions associated with the generation of electricity by the Renewable Energy Facility. For example, any CO2 emission allowances that may be allocated to a Renewable Energy Facility by a Governmental Authority on a basis other than a calculation of such Facility's actual avoided emissions would not be included as an Environmental Attribute.

### **Vintage True-Up**

When specifying Vintages, parties should be aware of the true-up, banking and borrowing periods provided under the Applicable Program. Parties transacting in voluntary markets, or with entities whose compliance in RPS programs is quasi-voluntary, may wish to provide in the applicable Product Order under Vintage:

; provided, however, that pursuant to Green-e requirements that provide for out-of-year true-up periods under certain circumstances, all Environmental Attributes will be derived from the energy that is or was generated and delivered to the electricity grid by the Renewable Energy Facility during the calendar year indicated as the Vintage, the last six months of the preceding calendar year, or the first three months of the following calendar year, or such other delivery period as may be set forth in standards made applicable by the parties by mutual agreement.

### **Unit Generation Definitions**

Two defined terms in Schedule P refer to the generating unit's performance. Some types of renewable resource generators, such as wind turbines or solar cells, are intermittent, and only generate electricity when the wind blows or the sun shines. Therefore, these units may not be able to generate to a fully contracted quantity. In a "Unit Contingent" sale, Seller is excused from underdelivery if the unit does not generate the full amount contracted for with Buyer in the period indicated, and puts Buyer at the top of the stack from which the Seller may be making sales from the unit over the period indicated. In a "Generation Contingent" sale, Seller is excused if the unit does not generate the full amount contracted with Buyer and all the other parties to whom Seller has contracted for sale from the unit, and puts Buyer within the stack from which Seller may be making sales from the unit over the period indicated. Buyers of a Generation Contingent Product may consider asking the seller about those other sale commitments. A seller with a 20MW unit entering into two 10MW Unit Contingent transactions runs the risk of breaching both contracts by making both sales Unit Contingent, since both buyers could claim a first entitlement to generation from the unit. A seller in such case may wish to indicate the Product is Generation Contingent, and that each buyer receives half of the RECs as generated.

### **Liquidated Damages**



Some parties may wish to add language, common to liquidated damages sections in trading contracts, such as the following to Section 5.7. The language is not in the body of the contract itself, as the working group did not consider it sufficiently effective across the many jurisdictions from which the parties could elect to govern the contract, because in some jurisdictions, the recitation might be construed as an inadvertent admission that damages may not be recoverable at all as being insufficiently capable of being liquidated:

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

### **California Judicial Reference**

Current California case law brings into questions the enforceability of jury trial waivers, although waivers of jury trial in the context of an agreement to arbitrate are enforceable. One effective way to waive jury trial without an agreement to arbitrate is by agreeing to judicial reference. Here is an example clause. If using this clause, Parties should specify in advance the applicable County Superior Court.

1) Each controversy, dispute or claim between the Parties arising out of or relating hereto, which controversy, dispute or claim is not settled in writing within 30 days after the “Claim Date” (defined as the date on which a Party gives written notice to the other Party that a controversy, dispute or claim exists), will be adjudicated by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“CCP”), which will constitute the exclusively remedy for the adjudication of any controversy, dispute or claim concerning this Agreement, including whether such controversy, dispute or claim is subject to the reference proceeding and except as set forth herein, the Parties waive their rights to initiate any legal proceedings against each other in any court or jurisdiction other than the Superior Court in the County specified on the Cover Sheet (the “Court”). The referee will be a retired Judge of the Court selected by mutual agreement of the Parties, and if they cannot so agree within forth-five days after the Claim Date, the referee will be promptly selected by the Presiding Judge of the Court (or his representative). If the Presiding Judge selects the referee, each Party will have one peremptory challenge pursuant to CCP §170.6. The referee will be appointed to sit as a temporary judge, with all of the powers for a temporary judge, as authorized by law, and upon selection should take and subscribe to the oath of office as provided for in Rule 244 of the California Rules of the Court (or any subsequently enacted Rule). The referee will (a) set the matter for hearing within sixty days after the date of his or her selection and (b) try any and all issues of law or fact and report a statement of decision upon them, if possible, within ninety days of the Claim Date. Any decision rendered by the referee will be final, and judgment will be entered thereon pursuant to CCP §644 in any court in the State of California having jurisdiction. All discovery will be completed no later than 15 days before the first hearing date established by the referee. The referee may extend such period in the event of a Party’s refusal to provide requested discovery or unavailability of a witness due to absence or illness. No Party will be entitled to “priority” in conducting discovery. Depositions may be taken by either Party upon seven days written notice, and disputes regarding depositions and request for production or inspection of documents which cannot be resolved by the Parties will be submitted to the referee as provided herein. The Superior Court is empowered to issue temporary and/or provisional remedies, as appropriate.

2) Except as expressly set forth herein, the referee will determine the manner in which the reference proceeding is conducted including the time and place of all hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, will be conducted without a court reporter except that when any Party so requests, a court reporter will be used at any hearing conducted before the referee. The Party making such a request will be the obligation to arrange for and pay for the court reporters. The costs of the court reporter at the trial will be borne equally by the Parties.

3) The referee will be required to determine all issues in accordance with the laws of the State of California and those specified in the Agreement. The rules of evidence applicable to proceedings at law in the State of California will apply to the reference proceeding. The referee will be empowered to enter equitable as well as legal relief, to provide all temporary and/or provisional remedies and to enter equitable orders that will be final. The referee will issue a single judgment at the close of the reference proceeding which will dispose of all of the claims of the Parties that are the subject of the reference. The Parties expressly reserve the right to contest or appeal from the final judgment or any appealable order or appealable judgment entered by the referee. The Parties expressly reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, will also be a reference proceeding hereunder.

Introduction for Users and Guidance Notes prepared by EMA representative co-chair, Jeremy D. Weinstein, with the invaluable assistance of co-chairs Christopher Berendt and Baird Brown, and Claire Broido Johnson, Stephanie Hamilton,

Posted: May 14, 2019

Mark Perlis, Michele Richardson, and William W. Westerfield. The contributions to all aspects of this contract by the full working group, listed at <http://environmentalmarkets.org/>, too numerous to cite here, are very gratefully acknowledged.

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## STATE OF ILLINOIS STANDARD BUSINESS TERMS AND CONDITIONS

### Exhibit K.1

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#### 1. PAYMENT TERMS AND CONDITIONS:

- 1.1 Late Payment: Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State. Payment terms contained on Vendor's invoices shall have no force and effect.
- 1.2 Expenses: The State will not pay for supplies provided or services rendered, including related expenses, incurred prior to the execution of this contract by the Parties even if the effective date of the contract is prior to execution.
- 1.3 Prevailing Wage: As a condition of receiving payment Vendor must (i) be in compliance with the contract, (ii) pay its employees prevailing wages when required by law, (iii) pay its suppliers and subcontractors according to the terms of their respective contracts, and (iv) provide lien waivers to the State upon request. Examples of prevailing wage categories include public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services. The prevailing wages are revised by the Department of Labor and are available on the Department's official website, which shall be deemed proper notification of any rate changes under this subsection. Vendor is responsible for contacting the Illinois Department of Labor to ensure understanding of prevailing wage requirements at 217-782-6206 or <http://www.state.il.us/agency/idol/index.htm>.
- 1.4 Invoicing: By submitting an invoice, Vendor certifies that the supplies or services provided meet all requirements of the contract, and the amount billed and expenses incurred are as allowed in the contract. All invoices are subject to statutory offset. 30 ILCS 210.

1.4.1. Vendor shall not bill for any taxes unless accompanied by proof that the State is subject to the tax. If necessary, Vendor may request the Agency's Illinois tax exemption number and federal tax exemption information.

1.4.2. Vendor shall invoice at the completion of the contract unless invoicing is tied in the contract to milestones, deliverables, or other invoicing requirements agreed to in the contract.

2. **SUBCONTRACTING:** For purposes of this section, subcontractors are those specifically hired to perform all or part of the work covered by the contract. Vendor must receive prior written approval before use of any subcontractors in the performance of this contract. Vendor shall describe, in an attachment if not already provided, the names and addresses of all authorized subcontractors to be utilized by Vendor in the performance of this contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this contract. All subcontracts must include the same certifications that Vendor must make as a condition of this contract. Vendor shall include in each subcontract the subcontractor certifications as shown on the Standard Subcontractor Certification form available from the State.

The "work covered by the contract" is the transfer in title to, and electronic delivery of, renewable energy credits

## STATE OF ILLINOIS

### STANDARD BUSINESS TERMS AND CONDITIONS

#### Exhibit K.1

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generated by the photovoltaic system identified in the contract. System owners, system installers, site owners, and others involved in the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic facility are not considered “subcontractors hire to perform all or part of the work covered by the contract.”

3. **AUDIT/RETENTION OF RECORDS:** Vendor and its subcontractors shall maintain books and records relating to the performance of the contract or subcontract and necessary to support amounts charged to the State pursuant the contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three years from the later of final payment under the term or completion of the subcontract. If federal funds are used to pay contract costs, the Vendor and its subcontractors must retain its records for five years. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the procuring Agency, the Illinois Solar-for-All Program Administrator, the Auditor General, the Executive Inspector General, State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books and records are not available to support the purported disbursement. The Vendor or subcontractors shall not impose a charge for audit or examination of the Vendor’s books and records. 30 ILCS 500/20-65.
4. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to Vendor’s performance of this contract. Vendor shall continue to perform its obligations while any dispute concerning the contract is being resolved unless otherwise directed by the State.
5. **NO WAIVER OF RIGHTS:** Except as specifically waived in writing, failure by a Party to exercise or enforce a right does not waive that Party’s right to exercise or enforce that or other rights in the future.
6. **RESERVED.**
7. **CONFIDENTIAL INFORMATION:** Each Party, including its agents and subcontractors, to this contract may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this contract. Vendor shall presume all information received from the State or to which it gains access pursuant to this contract is confidential. Vendor information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act, shall be considered public. No confidential data collected, maintained, or used in the course of performance of the contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of the contract or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of the contract, in whatever form it is maintained, promptly at the end of the contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party’s possession prior to its acquisition from the disclosing Party that were received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; that is now or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently

## STATE OF ILLINOIS STANDARD BUSINESS TERMS AND CONDITIONS

### Exhibit K.1

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developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

- 8. USE AND OWNERSHIP:** All work performed or supplies created by Vendor under this contract, whether written documents or data, goods or deliverables of any kind, shall be deemed work -for -hire under copyright law and all intellectual property and other laws, and the State of Illinois is granted sole and exclusive ownership to all such work, unless otherwise agreed in writing. Vendor hereby assigns to the State all right, title, and interest in and to such work including any related intellectual property rights, and waives any and all claims that Vendor may have to such work including any so-called "moral rights" in connection with the work. Vendor acknowledges the State may use the work product for any purpose. Confidential data or information contained in such work shall be subject to confidentiality provisions of this contract.

The "work performed" under this contract is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract. Documents, data, and goods related to the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic system are not considered to be work performed under this contract to which the state would be granted rights.

- 9. INDEMNIFICATION AND LIABILITY:** The Vendor shall indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of: (a) any breach or violation by Vendor of any of its certifications, representations, warranties, covenants or agreements; (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss claimed to result in whole or in part from Vendor's negligent performance; or (c) any negligent act, activity or omission of Vendor or any of its employees, representatives, subcontractors or agents. Neither Party shall be liable for incidental, special, consequential or punitive damages.

"Performance" under this contract is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract.

- 10. INSURANCE:** Vendor shall, at all times during the term and any renewals, maintain and provide a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. Vendor shall provide: (a) General Commercial Liability occurrence form in amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amount required by law. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims.

- 11. INDEPENDENT CONTRACTOR:** Vendor shall act as an independent contractor and not an agent or employee of, or joint venture with the State. All payments by the State shall be made on that basis.

- 12. SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the State during the term of this contract to perform any work under this contract. Vendor shall give notice immediately to the Agency's director if Vendor solicits or intends to solicit State employees to perform any work under this contract.

## STATE OF ILLINOIS STANDARD BUSINESS TERMS AND CONDITIONS

### Exhibit K.1

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“Performance” under this contract is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract.

- 13. COMPLIANCE WITH THE LAW:** The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance of this contract. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes. Vendor shall obtain at its own expense, all licenses and permissions necessary for the performance of this contract.
- 14. BACKGROUND CHECK:** Whenever the State deems it reasonably necessary for security reasons, the State may conduct, at its expense, criminal and driver history background checks of Vendor’s and subcontractor’s officers, employees or agents. Vendor or subcontractor shall reassign immediately any such individual who, in the opinion of the State, does not pass the background checks.
- 15. APPLICABLE LAW:** This contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois. The Department of Human Rights’ Equal Opportunity requirements are incorporated by reference. 44 ILL. ADMIN. CODE 750. Any claim against the State arising out of this contract must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. The State shall not enter into binding arbitration to resolve any contract dispute. The State of Illinois does not waive sovereign immunity by entering into this contract. The official text of cited statutes is incorporated by reference. An unofficial version can be viewed at [www.ilga.gov/legislation/ilcs/ilcs.asp](http://www.ilga.gov/legislation/ilcs/ilcs.asp).
- 16. ANTI-TRUST ASSIGNMENT:** If Vendor does not pursue any claim or cause of action it has arising under federal or state antitrust laws relating to the subject matter of the contract, then upon request of the Illinois Attorney General, Vendor shall assign to the State rights, title and interest in and to the claim or cause of action.
- 17. CONTRACTUAL AUTHORITY:** The Agency that signs for the State of Illinois shall be the only State entity responsible for performance and payment under the contract.
- 18. MODIFICATIONS AND SURVIVAL:** Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, to the extent possible, to give effect to the Parties’ intent. All provisions that by their nature would be expected to survive, shall survive termination. In the event of a conflict between the State’s and the Vendor’s terms, conditions and attachments, the State’s terms, conditions and attachments shall prevail.
- 19. PERFORMANCE RECORD/SUSPENSION:** Upon request of the State, Vendor shall meet to discuss performance or provide contract performance updates to help ensure proper performance of the contract. The State may consider Vendor’s performance under this contract and compliance with law and rule to determine whether to continue the contract, whether to suspend Vendor from doing future business with the State for a specified period of time, or to determine whether Vendor can be considered responsible on specific future contract opportunities.
- 20. FREEDOM OF INFORMATION ACT:** This contract and all related public records maintained by, provided to, or required to be provided to the State are subject to the Illinois Freedom of Information Act notwithstanding any

## STATE OF ILLINOIS STANDARD BUSINESS TERMS AND CONDITIONS

### Exhibit K.1

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provision to the contrary that may be found in this contract. 5 ILCS 140.

**21. SCHEDULE OF WORK:** Any work performed on State premises shall be done during the hours designated by the State and performed in a manner that does not interfere with the State and its personnel.

**22. WARRANTIES FOR SUPPLIES AND SERVICES**

22.1. Vendor warrants that the supplies furnished under this contract will: (a) conform to the standards, specifications, drawings, samples or descriptions furnished by the State or furnished by the Vendor and agreed to by the State, including but not limited to all specifications attached as exhibits hereto; (b) be merchantable, of good quality and workmanship, and free from defects for a period of twelve months or longer if so specified in writing, and fit and sufficient for the intended use; (c) comply with all federal and state laws, regulations, and ordinances pertaining to the manufacturing, packing, labeling, sale, and delivery of the supplies; (d) be of good title and be free and clear of all liens and encumbrances and; (e) not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the State for any losses, costs, damages or expenses, including without limitation, reasonable attorney's fees and expenses arising from failure of the supplies to meet such warranties.

22.2. Vendor shall insure that all manufacturers' warranties are transferred to the State and shall provide a copy of the warranty. These warranties shall be in addition to all other warranties, express, implied, or statutory, and shall survive the State's payment, acceptance, inspection, or failure to inspect the supplies.

22.3. Vendor warrants that all services will be performed to meet the requirements of the contract in an efficient and effective manner by trained and competent personnel. Vendor shall monitor performances of each individual and shall reassign immediately any individual who does not perform in accordance with the contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the contract or State policies.

The "supplies furnished" and "services" under this contract are limited to the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract Agency. Supplies and services related to the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic system are not considered to be furnished or performed under this contract.

**23. REPORTING, STATUS AND MONITORING SPECIFICATIONS:**

23.1. Vendor shall immediately notify the State of any event that may have a material impact on Vendor's ability to perform the contract.

**24. EMPLOYMENT TAX CREDIT:** Vendors who hire qualified veterans and certain ex-offenders may be eligible for tax credits. 30 ILCS 500/45-67 and 45-70. Please contact the Illinois Department of Revenue (telephone #: 217-524-4772) for information about tax credits.

**STATE OF ILLINOIS**  
**STANDARD BUSINESS TERMS AND CONDITIONS**

**Exhibit K.1**

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**25. TERMINATION FOR CONVENIENCE:**

- 25.1. This contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason. 30 ILCS 500/20-60.



## STATE OF ILLINOIS STANDARD CERTIFICATIONS

### Exhibit K.2

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Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of the contract is a material requirement and condition of this contract. By executing this contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

For purposes of these terms and conditions, system owners, system installers, site owners, and others involved in the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic system other than the Approved Vendor or any assignee to the contract are not considered "subcontractors used on this contract."

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
  - the contract may be void by operation of law,
  - the State may void the contract, and
  - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.
4. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies it he/she has not received (i) an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or (ii) an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133.
5. Vendor certifies that it is a legal entity authorized to do business in Illinois prior to submission of a bid, offer, or proposal.
6. RESERVED.
7. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the

## STATE OF ILLINOIS STANDARD CERTIFICATIONS

### Exhibit K.2

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State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record.

8. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business.
9. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the contract void if this certification is false.
10. Vendor certifies it is not barred from having a contract with the State based on violating the prohibition on providing assistance to the state in identifying a need for a contract (except as part of a public request for information process) or by reviewing, drafting or preparing solicitation or similar documents for the State.
11. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the contract void if this certification is false or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt.
12. RESERVED.
13. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract.
14. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract.
15. Vendor certifies it is not in violation of the "Revolving Door" provisions of the Illinois Procurement Code.
16. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement.
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, Offerors, contractors, proposers, or employees of the State.
18. RESERVED.
19. Drug Free Workplace
  - 19.1. If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act.
  - 19.2. If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage

## STATE OF ILLINOIS STANDARD CERTIFICATIONS

### Exhibit K.2

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in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580.

20. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States. Department of Commerce. 30 ILCS 582.
21. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
22. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
23. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2.
24. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.
25. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor or any child under the age of 12. 30 ILCS 584.
26. Vendor certifies that any violation of the Lead Poisoning Prevention Act, as it applies to owners of residential buildings, has been mitigated. 410 ILCS 45.
27. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
28. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. 30 ILCS 500/20-160 and 50-37. Vendor will not make a political contribution that will violate these requirements.

In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.

29. RESERVED.

## STATE OF ILLINOIS STANDARD CERTIFICATIONS

**Exhibit K.2**

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- 30.** A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to do business in Illinois prior to submitting a bid or offer. 30 ILCS 500/20-43. If you do not meet these criteria, then your bid or offer will be disqualified.

Vendor must make one of the following four certifications by checking the appropriate box. If C or D is checked, then Vendor must attach to this form the requested documentation.

- A. Vendor certifies it is an individual acting as a sole proprietor and is therefore not subject to the requirements of section 20-43 of the Procurement Code.
- B. Vendor certifies that it is a legal entity, and was authorized to do business in Illinois as of the date for submitting this bid or offer. The State may require Vendor to provide evidence of compliance before award.
- C. Vendor certifies it is a legal entity, and is a foreign corporation performing activities that do not constitute transacting business in Illinois as defined by Illinois Business Corporations Act (805 ILCS 5/13.75). A vendor claiming exemption under the Act must include a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.
- D. Vendor certifies it is a legal entity, and is an entity otherwise recognized under Illinois law as eligible for a specific form of exemption similar to those found in the Illinois Business Corporation Act (805 ILCS 5/13.75). A vendor claiming exemption under a specific law must provide a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

## STATE OF ILLINOIS

### FINANCIAL DISCLOSURES AND CONFLICTS OF INTEREST

**Exhibit K.3**

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Financial Disclosures and Conflicts of Interest forms (“forms”) must be accurately completed and submitted by the vendor, any parent entity(ies) and any subcontractors. There are nine steps to this form and each must be completed as instructed in the step heading, unless otherwise provided. A bid, offer, or proposal that does not include this form shall be considered not responsive. The State/Public University will consider this form when evaluating the bid, offer, or proposal or awarding the contract.

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the previously submitted form is no longer accurate, disclosing entities must provide an updated form.

Separate forms are required for the vendor, any parent entity(ies) and any subcontractors.

Subcontractor forms must be provided with a copy of the subcontract, if required, within 15 days after execution of the State/Public University contract or after execution of the subcontract, whichever is later, for all subcontracts with an annual value of more than \$50,000.

**This disclosure is submitted for:**

- Vendor
- Vendor’s Parent Entity(ies) (100% ownership)
- Subcontractor(s) >\$50,000
- Subcontractor’s Parent Entity(ies) > \$50,000

Project Name and Illinois Procurement Bulletin Number			
Vendor Name			
Doing Business As (DBA)			
Parent Entity			
Subcontractor			
Instrument of Ownership or Beneficial Interest	<p>Choose an item.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Sole Proprietorship  <input type="checkbox"/> Corporate Stock (C-Corporation, S-Corporation, Professional Corporation, Service Corporation)  <input type="checkbox"/> Limited Liability Company Membership Agreement (Series LLC, Low-Profit Limited Liability Partnership)                 </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Partnership Agreement (General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Limited Partnership)  <input type="checkbox"/> Not-for-Profit Corporation  <input type="checkbox"/> Trust Agreement (Beneficiary)  <input type="checkbox"/> Other                 </td> </tr> </table> <p>If you selected Other, please describe:</p>	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporate Stock (C-Corporation, S-Corporation, Professional Corporation, Service Corporation) <input type="checkbox"/> Limited Liability Company Membership Agreement (Series LLC, Low-Profit Limited Liability Partnership)	<input type="checkbox"/> Partnership Agreement (General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Limited Partnership) <input type="checkbox"/> Not-for-Profit Corporation <input type="checkbox"/> Trust Agreement (Beneficiary) <input type="checkbox"/> Other
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporate Stock (C-Corporation, S-Corporation, Professional Corporation, Service Corporation) <input type="checkbox"/> Limited Liability Company Membership Agreement (Series LLC, Low-Profit Limited Liability Partnership)	<input type="checkbox"/> Partnership Agreement (General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Limited Partnership) <input type="checkbox"/> Not-for-Profit Corporation <input type="checkbox"/> Trust Agreement (Beneficiary) <input type="checkbox"/> Other		

## STEP 1

### SUPPORTING DOCUMENTATION SUBMITTAL

(All vendors complete regardless of annual bid, offer, or contract value)

(Subcontractors with subcontract annual value of more than \$50,000 must complete)

You must select one of the six options below and select the documentation you are submitting. You must provide the documentation the applicable section requires with this form.

Option 1 – Publicly Traded Entities

1.A.  I will complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

1.B.  I will attach a copy of the Federal 10-K, and skip to Step 3.

Option 2 – Privately Held Entities with more than 200 Shareholders

2.A.  I will complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

2.B.  I will complete Step 2, Option A for each qualifying individual or entity holding any ownership share in excess of 5% and attach the information Federal 10-K reporting companies are required to report under 17 CFR 229.401.

Option 3 – All other Privately Held Entities, not including Sole Proprietorships

3.A.  I will complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

Option 4 – Foreign Entities

4.A.  I will complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

4.B.  I will attach a copy of the Securities Exchange Commission Form 20-F or 40-F and skip to Step 3.

Option 5 – Not-for-Profit Entities

I will complete Step 2, Option B.

Option 6 – Sole Proprietorships

I will skip to Step 3.

## STEP 2

### DISCLOSURE OF FINANCIAL INTEREST OR BOARD OF DIRECTORS

(All vendors, except sole proprietorships, must complete regardless of annual bid, offer, or contract value)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Complete **either** Option A (for all entities other than not-for-profits) or Option B (for not-for-profits). Additional rows may be inserted into the tables or an attachment may be provided if needed.

#### OPTION A – Ownership Share and Distributive Income

**Ownership Share** – If you selected Option 1.A., 2.A., 2.B., 3.A., or 4.A. in Step 1, provide the name and address of each individual and entity and their percentage of ownership if said percentage exceeds 5%, or the dollar value of their ownership if said dollar value exceeds \$106,447.20.

Check here if including an attachment with requested information in a format substantially similar to the format below.

TABLE – X			
Name	Address	% of Ownership	\$ Value of Ownership

**Distributive Income** – If you selected Option 1.A., 2.A., 3.A., or 4.A. in Step 1, provide the name and address of each individual and their percentage of the disclosing vendor's total distributive income if said percentage exceeds 5% of the total distributive income of the disclosing entity, or the dollar value of their distributive income if said dollar value exceeds \$106,447.20.

Check here if including an attachment with requested information in a format substantially similar to the format below.

TABLE – Y			
Name	Address	% of Distributive Income	\$ Value of Distributive Income

Please certify that the following statements are true.

I have disclosed all individuals or entities that hold an ownership interest of greater than 5% or greater than \$106,447.20.

Yes  No

I have disclosed all individuals or entities that were entitled to receive distributive income in an amount greater than \$106,447.20 or greater than 5% of the total distributive income of the disclosing entity.

Yes  No

**OPTION B – Disclosure of Board of Directors (Not-for-Profits)**

If you selected Option 5 in Step 1, list members of your board of directors. Please include an attachment if necessary.

TABLE – Z	
Name	Address

**STEP 3**  
**DISCLOSURE OF LOBBYIST OR AGENT**  
 (Complete only if bid, offer, or contract has an annual value over \$25,000)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

Yes No. Is your company represented by or do you employ a lobbyist or other agent required to register under the Lobbyist Registration Act (lobbyist must be registered pursuant to the Act with the Secretary of State) or other agent who is not identified through Step 2, Option A above and who has communicated, is communicating, or may communicate with any State/Public University officer or employee concerning the bid or offer? If yes, please identify each lobbyist and agent, including the name and address below.

Name	Address	Relationship to Disclosing Entity

Describe all costs/fees/compensation/reimbursements related to the assistance provided by each representative lobbyist or other agent to obtain a State/Public University contract:



## STEP 4

### PROHIBITED CONFLICTS OF INTEREST

(All vendors must complete regardless of annual bid, offer, or contract value)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 4 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above. Please provide the name of the person for which responses are provided:

1. Do you hold or are you the spouse or minor child of any person who holds an elective office in the State of Illinois or hold a seat in the General Assembly?  Yes  No
2. Have you, your spouse, or minor child been appointed to or employed in any offices or agencies of State government and receive compensation for such employment in excess of 60% (\$106,447.20) of the salary of the Governor?  Yes  No
3. Are you or are you the spouse or minor child of an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority?  Yes  No
4. Have you, your spouse, or an immediate family member who lives in your residence currently or who lived in your residence within the last 12 months been appointed as a member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor?  Yes  No
5. If you answered yes to any question in 1-4 above, please answer the following: Do you, your spouse, or minor child receive from the vendor more than 7.5% of the vendor's total distributable income or an amount of distributable income in excess of the salary of the Governor (\$177,412.00)?  Yes  No
6. If you answered yes to any question in 1-4 above, please answer the following: Is there a combined interest of self with spouse or minor child more than 15% (\$354,824.00) in the aggregate of the vendor's distributable income or an amount of distributable income in excess of two times the salary of the Governor?  Yes  No

## STEP 5

### POTENTIAL CONFLICTS OF INTEREST RELATING TO PERSONAL RELATIONSHIPS

(Complete only if bid, offer, or contract has an annual value over \$25,000)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 5 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above.

Please provide the name of the person for which responses are provided:

1. Do you currently have, or in the previous 3 years have you had State employment, including contractual employment of services?  Yes  No
2. Has your spouse, father, mother, son, or daughter, had State employment, including contractual employment for services, in the previous 2 years?  Yes  No

3. Do you hold currently or have you held in the previous 3 years elective office of the State of Illinois, the government of the United States, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois?  Yes  No
4. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding elective office currently or in the previous 2 years?  Yes  No
5. Do you hold or have you held in the previous 3 years any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that?  Yes  No
6. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding appointive office currently or in the previous 2 years?  Yes  No
7. Do you currently have or in the previous 3 years had employment as or by any registered lobbyist of the State government?  Yes  No
8. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) that is or was a registered lobbyist?  Yes  No
9. Do you currently have or in the previous 3 years had compensated employment by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections?  Yes  No
10. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) who is or was a compensated employee of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections?  Yes  No

## STEP 6

### EXPLANATION OF AFFIRMATIVE RESPONSES

(All vendors must complete regardless of annual bid, offer, or contract value)

(Subcontractors with subcontract annual value of more than \$50,000 must complete)

If you answered "Yes" in Step 4 or Step 5, please provide on an additional page a detailed explanation that includes, but is not limited to the name, salary, State agency or university, and position title of each individual.

**STEP 7**  
**POTENTIAL CONFLICTS OF INTEREST RELATING TO**  
**DEBARMENT & LEGAL PROCEEDINGS**

(Complete only if bid, offer, or contract has an annual value over \$25,000)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

This step must be completed for each person disclosed through Step 2, Step 3, and for each entity and sole proprietor disclosed in Step 1.

Please provide the name of the person or entity for which responses are provided:

1. Within the previous ten years, have you had debarment from contracting with any governmental entity?  Yes  No
2. Within the previous ten years, have you had any professional licensure discipline?  Yes  No
3. Within the previous ten years, have you had any bankruptcies?  Yes  No
4. Within the previous ten years, have you had any adverse civil judgments and administrative findings?  Yes  No
5. Within the previous ten years, have you had any criminal felony convictions?  Yes  No

If you answered "Yes", please provide a detailed explanation that includes, but is not limited to the name, State agency or university, and position title of each individual.

## STEP 8

### DISCLOSURE OF CURRENT AND PENDING CONTRACTS

(Complete only if bid, offer, or contract has an annual value over \$25,000)

(Subcontractors with subcontract annual value of more than \$50,000 must complete)

If you selected Option 1, 2, 3, 4, or 6 in Step 1, do you have any contracts, pending contracts, bids, proposals, or other ongoing procurement relationships with units of State of Illinois government?  Yes  No.

If "Yes", please specify below. Attach an additional page in the same format as provided below, if desired.

Agency/University	Project Title	Status	Value	Contract Reference/P.O./Illinois Procurement Bulletin #

Please explain the procurement relationship:

## STEP 9

### SIGN THE DISCLOSURE

(All vendors must complete regardless of annual bid, offer, or contract value)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

This disclosure is signed, and made under penalty of perjury for all for-profit entities, by an authorized officer or employee on behalf of the bidder or offeror pursuant to Sections 50-13 and 50-35 of the Illinois Procurement Code. This disclosure information is submitted on behalf of:

Name of Disclosing Entity:

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

Date: \_\_\_\_\_, 20\_\_\_\_

Printed Name:

Title:

Phone Number:

Email Address:

## STATE OF ILLINOIS DISCLOSURE OF BUSINESS OPERATIONS WITH IRAN

### Exhibit K.4

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Each bid, offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 of the Illinois Procurement Code, shall include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and:

- more than 10% of the company's revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action; or
- the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran.

A bid, offer, or proposal that does not include this disclosure shall not be considered responsive. We may consider this disclosure when evaluating the bid, offer, or proposal or awarding the contract.

There are no business operations that must be disclosed to comply with the above cited law.

The following business operations are disclosed to comply with the above cited law:

## STATE OF ILLINOIS TAXPAYER IDENTIFICATION NUMBER

### Exhibit K.5

I certify that:

The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the D/B/A on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name:

Business Name:

Taxpayer Identification Number:

Social Security Number:            or

Employer Identification Number:

Legal Status (check one):

- Individual
- Sole Proprietor
- Partnership
- Legal Services Corporation
- Tax-exempt
- Corporation providing or billing medical and/or health care services
- Corporation NOT providing or billing medical and/or health care services

- Governmental
  - Nonresident alien
  - Estate or trust
  - Pharmacy (Non-Corp.)
  - Pharmacy/Funeral Home/Cemetery (Corp.)
  - Limited Liability Company
- (select applicable tax classification)
- D = disregarded entity
  - C = corporation
  - P = partnership

Signature of Authorized Representative: \_\_\_\_\_

Date: