



Commentary and Annotated ISDA REC Annex

May 2021

ISDA Publishes REC Annex

The International Swaps and Derivatives Association (**ISDA**) is launching and publishing the ISDA U.S. Renewable Energy Certificate Annex (**REC Annex**) to enable market participants to efficiently sell and purchase renewable energy certificates (**RECs**) under the ISDA Master Agreement. Jones Day advised on and prepared the REC Annex as ISDA's counsel.

The REC Annex is part of ISDA's broader efforts to facilitate the transition to a sustainable economy by offering a vital tool to help market participants mobilize financing and/or meet their environmental, social, and governance (**ESG**) goals. The REC Annex is designed to function as an industry standard template for REC transactions and can be combined with other ISDA documentation to establish the terms of additional ESG products.

Attached to this *Commentary* is the REC Annex with explanatory footnotes prepared by Jones Day to further guide market participants on select provisions in using the REC Annex (**Annotated REC Annex**).

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The REC Annex can facilitate the mobilization of financing to help achieve a sustainable economy and assist market participants with meeting the renewable energy and carbon reduction priorities of their environmental, social, and governance (**ESG**) goals. It builds on the success of prior commodity annexes published by ISDA and provides a foundation for potential future documentation for other ESG derivatives to meet the challenges of climate change and drive climate innovation.

A REC, also referred to as a renewable energy credit, is a tradable instrument that represents the environmental benefits associated with one megawatt-hour of electricity generated by a renewable source such as solar or wind. The buyer of a REC has the exclusive right to claim the environmental benefits associated with the renewable energy generation underlying the REC. The developer of the renewable energy project, which is the initial seller of a REC, is able to use the promise of a future revenue stream from the sale of RECs to obtain equity and debt financing.

The REC Annex is designed to function as an industry standard template for REC transactions as they are presently conducted and as they may be conducted in the future. It contains key placeholders to allow ISDA or market participants to easily add or supplement product definitions and contract terms to reflect new regulatory requirements and new market practices.

The REC Annex can be used together with any other existing ISDA documentation, including the ISDA North American Power Annex, the 2005 ISDA Commodity Definitions, and other swap provisions. With this flexibility, users can bundle RECs with other related products under the ISDA architecture to implement a broad range of transactions, including virtual power purchase agreements, physical renewable energy transactions, and others.

Attached to this *Commentary* is the REC Annex with explanatory footnotes prepared by Jones Day to further guide market participants on select provisions in using the REC Annex (**Annotated REC Annex**).

Jones Day's work on the REC Annex is a testament to its continued leadership in the renewable energy and ESG derivatives space, as well as its long-standing commitment to finding innovative ways to help clients and market participants in the United States and globally meet their sustainability goals. Beginning with its first transactions involving RECs and carbon offsets in the mid-2000s, Jones Day has accumulated an extensive record of contributing to market standards for ESG transactions that includes: developing the tracking account framework for renewable energy swaps, which is still used throughout the industry today; drafting one of the first corporate virtual power purchase agreements; advising on the launching of a private electricity procurement auction in Mexico for the purchase and sale of capacity, energy, and clean energy certificates; structuring innovative sleeve transactions with renewable energy projects to enable retail purchases of physical renewable energy for portfolios of facilities; developing leading-edge contract mechanisms to deliver and redeem guarantees of origin to meet sustainability goals in the European Union; advising on the negotiation of one of the first proxy revenue swaps in Australia; and assisting clients at the forefront of utilizing blockchain technology to enhance the transparency and efficiency of renewable energy procurement, carbon accounting, and ESG reporting.

The REC Annex reflects ISDA's recognition of the urgency to address climate change and to provide a foundation for further development of ESG derivatives. By standardizing product definitions and contract terms, the REC Annex can enable increased efficiency and promote legal certainty in connection with the purchase and sale of RECs. It can also be combined with other ISDA documentation to establish the terms of additional ESG products. The REC Annex is part of ISDA's broader efforts to facilitate the transition to a sustainable economy by offering a vital tool to help market participants effectuate financing and/or meet their ESG goals.

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ISDA U.S. RENEWABLE ENERGY CERTIFICATE ANNEX

Part [6].¹ Physically Settled REC Transactions

(a) ISDA U.S. Renewable Energy Certificate Annex

(i) **REC Transactions under this Agreement.** The provisions of this ISDA U.S. Renewable Energy Certificate Annex (the “*REC Annex*”) will apply solely to transactions between the parties for the purchase or sale of a Product (as defined below) on a spot or forward basis or as an option to purchase, sell or transfer a Product (collectively, “*REC Transactions*”). All REC Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and will be Transactions for the purposes hereof. A subsequent agreement between the parties to settle a REC Transaction without involving a physical delivery of a Product will not affect such REC Transaction’s status as a REC Transaction under the REC Annex. In the event of any inconsistency between the provisions of the Master Agreement and the REC Annex, the REC Annex will govern with respect to REC Transactions. In the event of any inconsistency between the provisions of any Confirmation incorporating a REC Transaction and the REC Annex, the portion of such Confirmation applicable to such REC Transaction will govern with respect to such REC Transaction.

(ii) **Incorporation of the REC Annex.** The REC Annex may be incorporated into, and supplement and form a part of, this Agreement as if set forth in full without change or modification, subject to the applicable elective provisions and amendments to the REC Annex, by words to such effect in the applicable sub-part of the Schedule.²

(b) Obligations and Deliveries

(i) Seller’s and Buyer’s Obligations.

(A) With respect to each REC Transaction, Seller will sell and Deliver, or cause to be Delivered, the Quantity of the Product to Buyer. Buyer will purchase and Receive, or cause to be Received, the Quantity of the Product and will pay Seller the Contract Price. However, with respect

¹ **Note to Market Participants:** Insert reference to applicable Part of the Schedule.

² **Note to Market Participants:** A non-exclusive example approach to adopting the REC Annex in the Schedule is set forth below:

Part [6]. Physically Settled REC Transactions

(a) **ISDA U.S. Renewable Energy Certificate Annex.** The ISDA U.S. Renewable Energy Certificate Annex published by the International Swaps and Derivatives Association, Inc. (the “*REC Annex*”) is incorporated into, and supplements and forms a part of, this Agreement as if set forth in full without change or modification, subject to the applicable elective provisions and amendments to the REC Annex.

(b) Elective Provisions to the REC Annex.

(i) [Insert remainder of text from clause (j) of the REC Annex after “[()] Elective Provisions to the REC Annex” and make agreed-upon elections]

(c) **Certain Amendments to the REC Annex.** ___ If elected as applicable, the following amendments will apply. If not checked, election is deemed not applicable.

[(i) If elected, insert applicable amendments]



to options, the obligations set forth in the preceding two sentences will only arise if the option is exercised in accordance with its terms. Seller will be responsible for any costs or charges imposed on or associated with the Product or its Delivery prior to the Delivery Point. Buyer will be responsible for any costs or charges imposed on or associated with the Product or its Receipt at and after the Delivery Point.

(B) On or prior to each Delivery Date specified in a REC Transaction, Seller will (I) Initiate a REC Transfer, (II) Initiate a REC Retirement or (III) Initiate an Attestation Transfer (each, a “*Delivery Methodology*”) of the applicable Quantity of the Product as specified in a REC Transaction. With respect to each REC Transfer, upon receiving notice from the Applicable Tracking System or Seller that (x) Seller has Initiated a REC Transfer and (y) the Applicable Tracking System permits Buyer to Receive such REC Transfer, Buyer will Receive such REC Transfer (1) within 3 Local Business Days thereafter or, (2) if Receipt of such REC Transfer within 3 Local Business Days thereafter is impossible under the rules of the Applicable Tracking System or Applicable Program, promptly after receiving such notice.

(ii) **Additional Obligations.**

(A) Seller and Buyer will each cooperate and assist each other in good faith and undertake reasonable efforts to comply with any and all regulatory obligations relating to recording, tracking and disclosure of the Delivery of the Product. With respect to each REC Transfer or REC Retirement, Seller and Buyer will cooperate in good faith and undertake reasonable efforts to consummate recognition of the Delivery of the Product in each Applicable Tracking System. Notwithstanding any agreement between the parties regarding the protection of confidential information other than as required by Applicable Law, (I) upon reasonable request by Buyer within 3 years after the Delivery of any Product, Seller will provide certifications, affidavits and information and copies of records and documentation to Buyer as reasonably necessary to facilitate the use of the Product under any Applicable Tracking System, Applicable Program, Greenhouse Gas Program or any other Renewable Portfolio Standard or Generation Information System by each of Buyer and its Affiliates and each of Buyer’s purchasers or subsequent purchasers of the Product Delivered by Seller under a REC Transaction, and (II) each of Buyer and its Affiliates and each of Buyer’s purchasers or subsequent purchasers of the Product Delivered by Seller under a REC Transaction will have the right to disclose any of such certifications, affidavits and information and copies of records and documentation as reasonably necessary to facilitate the use of the Product under any Applicable Tracking System, Applicable Program, Greenhouse Gas Program or any other Renewable Portfolio Standard or Generation Information System.³

(B) With respect to each REC Transfer or REC Retirement, upon notification by the Administrator of the Applicable Tracking System that a proposed Delivery of Product under a REC Transaction will not be recorded, the parties will promptly confer and cooperate in good faith and

³ **Note to Market Participants:** Clauses (I) and (II) are intended, among other things, to facilitate the use of any Product under any potential federal RPS, Greenhouse Gas Program or any other GIS or RPS in addition to any Applicable Tracking System and Applicable Program. But note that by operation of clause (b)(v)(A) below, any breach of these clauses (I) and (II) will result in an Event of Default by Seller solely with respect to each Applicable Tracking System or Applicable Program specified in a REC Transaction. If Seller breaches clauses (I) or (II) with respect to any other GIS or RPS or any Greenhouse Gas Program, Buyer may only seek relief in equity for specific performance.



undertake reasonable efforts to cure any defects in such proposed Delivery, so that such Delivery can be recorded and, in the case of a REC Transfer, such Product transferred to the REC Account of Buyer or its designee at the earliest reasonably possible date. Seller and Buyer acknowledge that any Delivery of Product by Seller will be considered timely if Initiated on or before the Delivery Date, but that, in the case of a REC Transfer, the obligations of the parties with respect to Delivery of Product will not be complete notwithstanding that Seller has Initiated Delivery and Buyer has Received Delivery until and unless such Product is deposited in the REC Account of Buyer or its designee in accordance with the Applicable Tracking System and Applicable Program.

(iii) ***Additional Seller's Representations and Warranties.*** In addition to any other representations and warranties made under this Agreement, Seller further represents and warrants to Buyer as of each date that Seller Initiates Delivery of any Product under a REC Transaction that (A) Seller has the right to sell such Product to Buyer; (B) such Product is Delivered to Buyer free and clear of any liens, security interests, claims or other encumbrances or title defects or any interest therein or thereto; (C) such Product complies with the requirements of, and is qualified under, each Applicable Tracking System and Applicable Program specified in a REC Transaction as they exist on each such date that Seller Initiates Delivery of such Product; (D) such Product was generated during each applicable Vintage specified in a REC Transaction; and (E) such Product has not been sold, retired, expired, claimed or represented as part of energy output or sales, or used to satisfy any obligations, under any Applicable Tracking System, Applicable Program, Greenhouse Gas Program or any other Renewable Portfolio Standard or Generation Information System.⁴

(iv) ***Communications on Environmental Claims.*** In addition to any other representations and warranties made under this Agreement, Seller (A) represents and warrants to Buyer as of each date that Seller Initiates Delivery of any Product under a REC Transaction that it has complied in all material respects with, and (B) covenants that thereafter it will comply in all material respects with, (I) any guidance or guides, administrative interpretations of law, no-action letters or other similar interpretive releases on the making of any environmental claims issued by (x) each Regulatory Agency with applicable jurisdiction and (y) each Applicable Program specified in a REC Transaction and (II) any Applicable Law on the making of any environmental claims, in each case in making any communications concerning the Product, a REC Transaction, the parties to such REC Transaction or any applicable Renewable Energy Facility.

(v) **Other Remedies.**

(A) Except with respect to each Applicable Tracking System and Applicable Program, any failure of Seller to comply with its obligations under the last sentence of clause (b)(ii)(A) (I) will not constitute an Event of Default and (II) will only entitle Buyer to seek relief in equity for specific performance to enforce such obligations under clause (b)(ii)(A).

(B) Seller will be deemed to not have breached (I) its obligations to Deliver, or cause to be Delivered, the Quantity of the Product under clause (b)(i)(A) if Seller has Initiated Delivery

⁴ **Note to Market Participants:** Representations and warranties are utilized to address the compliance of RECs with Applicable Tracking Systems and Applicable Programs as of each date that Seller Initiates Delivery of any Product under a REC Transaction (which is equivalent to the concept of “regulatorily continuing”). Note that clause (i) of the Elective Provisions provides the parties with the ability to elect alternative or supplemental provisions, which the parties could use to address the allocation of costs arising from any future changes in any Applicable Tracking System or Applicable Program, among other things.

and Buyer has Received Delivery but such Product has not been deposited in the REC Account of Buyer or its designee as set forth in clause (b)(ii)(B) or (II) its representations and warranties under clause (b)(iii) or its representations and warranties and covenants under clause (b)(iv), if part or all of the Quantity of the Product is disallowed under any Applicable Tracking System or Applicable Program specified in a REC Transaction due to any breach under clauses (I) or (II) (“**Disallowed Product**”) and either (x) Seller causes such Applicable Tracking System or Applicable Program to allow such Product or (y) Seller (1) pays damages to Buyer for such Disallowed Product under clause (c)(i) as if there had been a failure to Deliver such Disallowed Product and (2) reimburses to Buyer, if applicable, any Contract Price previously paid by Buyer for such Disallowed Product with interest accrued at the Default Rate, such interest to be calculated from and including the date the Contract Price was previously paid to but excluding the date the reimbursement is paid in full, in each case of clauses (x) and (y) reasonably promptly but no later than 30 days after Seller receives notice of such disallowance of such Product. After the satisfaction of clauses (1) and (2) by Seller, Buyer will use reasonable efforts to cause the transfer of the Disallowed Product to Seller.

(vi) **Additional System Requirements for Designated Applicable Tracking System.** To the extent that clause (ii) of the Elective Provisions is elected as being applicable with respect to any Applicable Tracking System (each, a “**Designated Applicable Tracking System**”), if the parties specify such Designated Applicable Tracking System under a REC Transaction, the additional requirements set forth under clause (ii) of the Elective Provisions (the “**Additional System Requirements**”) will apply with respect to such REC Transaction, unless otherwise provided in such REC Transaction.⁵

(vii) **Additional Program Requirements for Designated Applicable Program.** To the extent that clause (iii) of the Elective Provisions is elected as being applicable with respect to any Applicable Program (each, a “**Designated Applicable Program**”), if the parties specify such Designated Applicable Program under a REC Transaction, the additional requirements set forth under clause (iii) of the Elective Provisions (the “**Additional Program Requirements**”) will apply with respect to such REC Transaction, unless otherwise provided in such REC Transaction.⁶

(viii) **Force Majeure.** To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any REC Transaction and such party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other party (the “**non-Claiming Party**”) as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party will be excused from the performance of its obligations with respect to such REC Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to

⁵ **Note to Market Participants:** Parties have the option to incorporate any Additional System Requirements with respect to any Designated Applicable Tracking System under the Elective Provisions (such as additional requirements that may be necessitated by (a) any provisions that are specific to any Designated Applicable Tracking System or (b) the introduction or utilization of any technological developments or features with respect to any Designated Applicable Tracking System).

⁶ **Note to Market Participants:** Parties have the option to incorporate any Additional Program Requirements with respect to any Designated Applicable Program under the Elective Provisions (such as the incorporation of any contract terms and conditions required under any Designated Applicable Program or by any Regulatory Agency).



the obligations of the Claiming Party excused by Force Majeure. If the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement form, Section 5(b)(ii) of the Master Agreement will not apply to any REC Transaction.

(c) **Remedies for Failure to Deliver or Receive**

(i) **Seller Failure.** If Seller fails to Deliver all or part of the Product pursuant to a REC Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller will pay Buyer on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount will include a written statement explaining in reasonable detail the calculation of such amount.

(ii) **Buyer Failure.** If Buyer fails to Receive all or part of the Product pursuant to a REC Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer will pay Seller on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount will include a written statement explaining in reasonable detail the calculation of such amount.

(d) **Payment**

(i) **Billing Period.** Unless otherwise specifically agreed upon by the parties, the calendar month will be the standard period for all payments pursuant to any REC Transaction under this Agreement (other than (A) payments due as a result of the designation of an Early Termination Date or (B) any option premium payments). As soon as practicable after the end of each month, each party will render to the other party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

(ii) **Timeliness of Payment.** Unless otherwise agreed upon by the parties, all invoices for payment pursuant to a REC Transaction will be due and payable in accordance with each party's invoice instructions within 5 Local Business Days after the later of (A) receipt of the invoice or, (B) if applicable, Delivery of the Product. Each party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(iii) **Payment for Options.** The premium amount for the purchase of an option will be paid within 2 Local Business Days of receipt of an invoice from the option seller. Upon exercise of an option, payment for the Product underlying such option will be due in accordance with the applicable provisions of clauses (d)(i) and (d)(ii).

(iv) **REC Transaction Netting.** If the parties enter into one or more REC Transactions, which in conjunction with one or more other outstanding REC Transactions, constitute Offsetting REC



Transactions, then all such Offsetting REC Transactions may, by agreement of the parties, be netted into a single REC Transaction under which:

- (A) the party obligated to Deliver the greater amount of Product will Deliver the difference between the total amount it is obligated to Deliver and the total amount to be Delivered to it under the Offsetting REC Transactions, and
- (B) the party owing the greater aggregate payment will pay the net difference owed between the parties.

Each single REC Transaction resulting under this clause will be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting REC Transaction occurs, outstanding obligations under the Offsetting REC Transactions which are satisfied by such offset will terminate. For purposes of the REC Annex, “*Offsetting REC Transaction*” means any two or more REC Transactions specifying the same Product of the same Vintage for Delivery on the same Delivery Date, where under one or more of such REC Transactions, one party is Seller and under the other such REC Transaction(s) the same party is Buyer.

(e) **Limitation of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CLAUSE (E), THE FOLLOWING PROVISION WILL APPLY SOLELY TO REC TRANSACTIONS, AND NOTHING IN THIS PROVISION WILL AFFECT THE ENFORCEABILITY OF SECTION 6 OF THE MASTER AGREEMENT WITH RESPECT TO REC TRANSACTIONS OR OTHERWISE.

THE EXPRESS WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT DELIVERED, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A REC TRANSACTION, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE



INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

(f) Taxes

(i) **Cooperation.** Each party will use reasonable effort to implement the provisions of and to administer this Agreement insofar as it applies to REC Transactions in accordance with the intent of the parties to minimize all Taxes, so long as neither party is materially adversely affected by such efforts.

(ii) **Taxes.** Notwithstanding Section 2(d) of the Master Agreement, Seller will pay, or cause to be paid, all Taxes imposed by any government authority on or with respect to the Product or a REC Transaction arising prior to the Delivery Point. Buyer will pay, or cause to be paid, all Taxes on or with respect to the Product or a REC Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer will promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing will obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under the law.

(g) Title and Risk of Loss

The parties will elect under clause (iv) of the Elective Provisions which of the following three options applies:

- Option A: Title to and risk of loss related to the Product will transfer from Seller to Buyer upon Delivery of the Product.
- Option B: Title to and risk of loss related to the Product will transfer from Seller to Buyer upon (i) Delivery of the Product and (ii) completion of payment for the Product.
- Option C: Alternative provisions as specified under clause (iv) of the Elective Provisions.⁷

(h) Miscellaneous

(i) **Severability.** If elected under clause (v) of the Elective Provisions as being applicable with respect to REC Transactions only, any provision of this Agreement declared or rendered unlawful by any applicable court or law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events being referred to herein as a "**Regulatory Event**") will not otherwise affect the remaining lawful obligations that arise under this Agreement. The parties agree that if a Regulatory Event occurs, they will use their best efforts to reform this Agreement with respect to REC Transactions only to give effect to the original intention of the parties; provided, however, that nothing in this provision will

⁷ **Note to Market Participants:** Option C enables parties to select alternative transfer provisions (such as designating that title and risk of loss will transfer upon generation of the energy that gives rise to the Product, which selection may also require additional modifications to other provisions of the REC Annex).



affect the enforceability of Sections 5 or 6 of the Master Agreement with respect to REC Transactions or otherwise.

(ii) **Confirmations.** The parties may confirm REC Transactions by using the form of Confirmation attached hereto as Exhibit A, with such changes to that form as are mutually acceptable to the parties, or using such other form that is mutually acceptable to the parties, provided that the failure to do so will not invalidate any REC Transaction agreed upon by the parties.

(iii) **Interpretation.** Unless a REC Transaction otherwise provides or the context otherwise requires,

(A) reference to any Applicable Law or a provision of any Applicable Law includes all regulations, rules, subordinate legislation, orders, decisions and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, modifications, reenactments, extensions or replacements of or successors to such law or provision;

(B) reference to any guidance or guides, administrative interpretations of law, no-action letters or other similar interpretive releases includes all consolidations, amendments, modifications, supplements, extensions or replacements of or successors to such guidance or guides, administrative interpretations of law, no-action letters or other similar interpretive releases;

(C) reference to any Applicable Tracking System, Applicable Program or Greenhouse Gas Program includes all consolidations, amendments, modifications, reenactments, extensions or replacements thereof or successors thereto;

(D) reference to any Regulatory Agency includes all replacements thereof or successors thereto;

(E) “including” means “including without limitation” and “including, but not limited to” and other forms of the verb “to include” are to be interpreted similarly; and

(F) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meaning.

(i) **Certain Modifications to the Master Agreement**

(i) **Events of Default: Sections 5(a)(i) and 5(a)(ii)(1).**

(A) With respect to all REC Transactions, the words “or delivery”, “in the case of any such payment or the first Local Delivery Day in the case of any such delivery” and “, in each case,” are hereby deleted in Section 5(a)(i) of the Master Agreement.

(B) With respect to all REC Transactions, the words “(or to deliver or receive the Product, the exclusive remedy for which is provided in clause (c) of Part [6] of the Schedule)” are hereby added at the end of the parenthetical of Section [5(a)(ii)][5(a)(ii)(1)] of the Master Agreement.



(ii) **Definitions: Section 14.** Section 14 of the Master Agreement is hereby amended by adding the following definitions:

“**Administrator**” means an administrator, certifier, governmental authority or other body with jurisdiction over the RECs under any Applicable Tracking System or Applicable Program, as applicable.

“**Alternative Compliance Payment**” or “**ACP**” means any monetary payment that may be made as an alternative to submitting RECs for compliance under each Applicable Program, or equivalent concept limiting the price of RECs under each Applicable Program.

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws (statutory, common or otherwise), ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Regulatory Agency or arbitrator that apply to the Product, a REC Transaction, the parties to such REC Transaction or any applicable Renewable Energy Facility.

“**Applicable Program**” means any Renewable Portfolio Standard or any other mandatory or voluntary domestic, international or foreign renewable energy standard, program, certification, scheme, protocol or specifications and, if applicable, any applicable category thereunder, as specified in a REC Transaction.

“**Applicable Tracking System**” means any Generation Information System specified in a REC Transaction.

“**Attestation**” means a transfer certificate or other certification satisfying the requirements of each Applicable Program or otherwise in form and substance reasonably acceptable to the parties, in each case used to evidence the Delivery of the Product.

“**Attestation Transfer**” has the meaning set forth in clause (c) of the definition of “Delivery”.

“**Buyer**” means the party to a REC Transaction that is obligated to purchase and, if applicable, Receive or cause to be Received, the Product, as specified in a REC Transaction.

“**Contract Price**” means the price in U.S. Dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in a REC Transaction.

“**Costs**” means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by a party either in terminating any arrangement pursuant to which it has hedged its obligations under a REC Transaction or entering into new arrangements which replace the obligations not performed by the other party under a REC Transaction.

“**Delivery**” or “**Deliver**” means

(a)(i) the submission by Seller or its designee of a valid electronic request to each Applicable Tracking System to initiate a transfer of the Product from the REC



Account of Seller or its designee to the REC Account of Buyer or its designee and such request has not been rescinded and (ii) the actual transfer of such Product under such Applicable Tracking System from the REC Account of Seller or its designee to the REC Account of Buyer or its designee after Receipt of such Product by such Buyer or its designee, in each case in accordance with each Applicable Tracking System and Applicable Program (each, a “**REC Transfer**”);

(b)(i) the submission by Seller or its designee of a valid electronic request to each Applicable Tracking System to initiate retirement of the Product on behalf of Buyer or its designee and (ii) the delivery by Seller or its designee to Buyer or its designee of notice and reasonable evidence of the actual retirement of such Product on behalf of Buyer or its designee under such Applicable Tracking System, in each case in accordance with each Applicable Tracking System and Applicable Program (each, a “**REC Retirement**”); or

(c) the delivery by Seller or its designee to Buyer or its designee of one or more Attestations evidencing the transfer of the Product from Seller or its designee to Buyer or its designee (each, an “**Attestation Transfer**”), as applicable.

“**Delivery Date**” means, with respect to a REC Transaction, the date specified in such REC Transaction on or prior to which Seller must Initiate Delivery of the Product.

“**Delivery Methodology**” has the meaning set forth in clause (b)(i)(B).

“**Delivery Obligation**” means the terms governing the obligations of Seller to Deliver and of Buyer to Receive the Product under a REC Transaction, as applicable.

“**Delivery Point**” means the point of time at which title to the Product is transferred from Seller to Buyer.

“**Elective Provisions**” means the elections and other provisions, as applicable, specified in clause (j).

“**Force Majeure**” has the meaning designated in clause (vi) of the Elective Provisions, wherein the parties will elect which of the following three options applies with respect to the definition of “Force Majeure”:

Option A: “Force Majeure” means an event or circumstance which prevents the Claiming Party from performing its obligations under one or more REC Transactions, which event or circumstance was not anticipated as of the date the REC Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure may not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure

of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price.

Option B: "Force Majeure" means (a) an event or circumstance affecting an Applicable Tracking System that prevents a party from performing, in whole or in part, any of its obligations under a REC Transaction or (b) an event or circumstance affecting the banking system that prevents a party from performing, in whole or in part, any of its payment obligations under a REC Transaction, in each case of clauses (a) and (b) so long as such event or circumstance is beyond the control of such party and such party could not overcome such event or circumstance after using reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses). Force Majeure may not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price.

Option C: Alternative definition as specified under clause (vi) of the Elective Provisions.

"Generation Information System" or **"GIS"** means the generation information system, generation attribute tracking system or other system that records generation from Renewable Energy Facilities and tracks ownership and transfers of any certificate, credit, allowance, green tag or other transferable indicia, howsoever entitled, associated with such generation.

"Greenhouse Gas" means carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons and nitrogen trifluoride and any other gas designated as a greenhouse gas under any Greenhouse Gas Program or Applicable Program.

"Greenhouse Gas Program" means any mandatory or voluntary domestic, international or foreign greenhouse gas reduction standard, program, certification, scheme, protocol or specifications and, if applicable, any applicable category thereunder.

"Initiate a REC Retirement" means to initiate a REC Retirement as described in clause (b)(i) of the definition of "Delivery".

"Initiate a REC Transfer" means to initiate a REC Transfer as described in clause (a)(i) of the definition of "Delivery".

"Initiate an Attestation Transfer" means to initiate an Attestation Transfer as described in clause (c) of the definition of "Delivery".

"Initiate Delivery" means to Initiate a REC Transfer, Initiate a REC Retirement or Initiate an Attestation Transfer, as applicable.



“**Product**” means the Renewable Energy Certificates designated under a REC Transaction and other terms related thereto, including terms describing REC Type, Delivery Obligation, Applicable Tracking System and Applicable Program as specified in such REC Transaction by reference to Schedule RP or as otherwise specified by the parties in such REC Transaction.

“**Quantity**” means the quantity of the Product that Seller agrees to sell and Deliver, or cause to be Delivered, to Buyer, and that Buyer agrees to purchase and, if applicable, Receive or cause to be Received, from Seller, as specified in a REC Transaction.

“**REC Account**” means an active account with an Applicable Tracking System.

“**REC Retirement**” has the meaning set forth in clause (b) of the definition of “Delivery”.

“**REC Transfer**” has the meaning set forth in clause (a) of the definition of “Delivery”.

“**REC Type**” means the type of Renewable Energy Certificate designated for the Product under a REC Transaction by reference to Schedule RP or as otherwise specified by the parties in a REC Transaction.

“**Receipt**” or “**Receive**” means, after Seller has Initiated a REC Transfer, Buyer’s or its designee’s submission to each Applicable Tracking System of its confirmation and acceptance of the request by Seller or its designee to Deliver the Product from the REC Account of Seller or its designee to the REC Account of Buyer or its designee in accordance with each Applicable Tracking System and Applicable Program.

“**Regulatory Agency**” means any (i) federal, state, local, territorial, tribal, municipal or foreign government or international organization and any department, commission, board, bureau, agency, instrumentality or judicial or administrative body thereof or (ii) any self-regulatory agency, control area or regional transmission operator, regional transmission organization or independent system operator, in each case of clauses (i) and (ii) having jurisdiction over the Product, a REC Transaction, the parties to such REC Transaction or any applicable Renewable Energy Facility.

“**Renewable Energy Certificate**”, “**Renewable Energy Credit**” or “**REC**” has the meaning set forth in Schedule RP or as otherwise specified by the parties in such REC Transaction.

“**Renewable Energy Facility**” means a generating unit that generates electricity from a Renewable Energy Source.

“**Renewable Energy Source**” means (a) an energy source that (i) is not fossil carbon-based and (ii) constantly renews itself or is regarded as practically inexhaustible, which may include solar, wind, biomass, geothermal, landfill gas or wave, tidal and thermal ocean technologies, or (b) any other energy source that is designated as “renewable” by any Applicable Tracking System, Applicable Program, Greenhouse Gas Program or any other Renewable Portfolio Standard or Generation Information System.



“**Renewable Portfolio Standard**” or “**RPS**” means a domestic, international or foreign law, rule or regulation that requires a stated amount or minimum proportion or quantity or other measurement of electricity that is sold or used by specified entities to be generated from Renewable Energy Sources.

“**Replacement Price**” means the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for any Product specified in a REC Transaction but not Delivered by Seller, plus any Costs reasonably incurred by Buyer to purchase such replacement Product, or, absent any such purchase, the market price for the Product not Delivered as determined by Buyer in a commercially reasonable manner; provided, however, that in no event may such market price be greater than the Alternative Compliance Payment as then in effect, as defined by the Applicable Program, for the applicable Reporting Year; and provided further that in no event may the Replacement Price include any penalties or similar charges or any stranded costs, nor will Buyer be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Seller’s liability.

“**Reporting Rights**” means the exclusive right to report sole ownership of the Product to any Regulatory Agency or under any Applicable Tracking System or Applicable Program.

“**Reporting Year**” means a compliance reporting period as required under each Applicable Program.

“**Sales Price**” means the price at which Seller, acting in a commercially reasonable manner, resells the Product not Received by Buyer, deducting from such proceeds any Costs reasonably incurred by Seller to sell and Deliver such Product to any third party purchaser, or, absent any such sale, the market price for such Product not Received as determined by Seller in a commercially reasonable manner; provided, however, that in no event may the Sales Price include any penalties or similar charges or any stranded costs, nor will Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability; and, if elected under clause (vii) of the Elective Provisions as being applicable, provided further that if Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not Received by Buyer, then the Sales Price with respect to such unsold Product will be deemed equal to \$0 (such proviso, the “**Zero Dollars Sales Price Proviso**”).

“**Schedule RP**” means “Schedule RP: REC Product Definitions” to the REC Annex, which is incorporated herein by reference.

“**Seller**” means the party to a REC Transaction that is obligated to sell and Deliver, or cause to be Delivered, the Product, as specified in a REC Transaction.

“**Vintage**” means the calendar year, Reporting Year or other time period as specified in a REC Transaction in which the energy associated with a REC was generated.



(j) **Implementation of Elective Provisions to the REC Annex**

In connection with the REC Annex being incorporated into, and supplementing and forming a part of, this Agreement by words to such effect in the Schedule as set forth in clause (a)(ii), the following applicable elective provisions to the REC Annex will also be set forth in the applicable sub-part of the Schedule.

⁸ **Elective Provisions to the REC Annex.**

(i) **(b)(iii): ___ Additional Seller’s Representations and Warranties.** If elected as applicable, the alternative or supplemental representations and warranties specified below will apply in lieu of or in addition to, as applicable, the provisions of clause (b)(iii). If not checked, election is deemed not applicable.

(ii) **(b)(vi): ___ Additional System Requirements for Designated Applicable Tracking System.** If elected as applicable, the Additional System Requirements for each Designated Applicable Tracking System are specified below.⁹ If not checked, election is deemed not applicable.

(iii) **(b)(vii): ___ Additional Program Requirements for Designated Applicable Program.** If elected as applicable, the Additional Program Requirements for each Designated Applicable Program are specified below.¹⁰ If not checked, election is deemed not applicable.

(iv) **(g): Title and Risk of Loss.** If one of the following three options is elected as applicable, the corresponding option under clause (g) will apply. If none are checked, Option A is deemed to apply.

Option A: Delivery

Option B: Delivery and Payment

Option C: Alternative Provisions [If elected, specify alternative provisions below]

(v) **(h)(i): ___ Severability.** If not checked, election is deemed not applicable.

⁸ **Note to Market Participants:** Insert reference to applicable sub-part of the Schedule.

⁹ **Note to Market Participants:** In addition to parties inserting agreed-upon Additional System Requirements under clause (ii) of the Elective Provisions, a future “Additional System Requirements Addendum” could be published for any Designated Applicable Tracking System(s) such that the parties may include wording indicating the incorporation of such addendum by reference (e.g., “The Additional System Requirements Addendum for [insert name of Designated Applicable Tracking System] is incorporated herein by reference.”).

¹⁰ **Note to Market Participants:** In addition to parties inserting agreed-upon Additional Program Requirements under clause (iii) of the Elective Provisions, a future “Additional Program Requirements Addendum” could be published for any Designated Applicable Tracking System(s) such that the parties may include wording indicating the incorporation of such addendum by reference (e.g., “The Additional Program Requirements Addendum for [insert name of Designated Applicable Program] is incorporated herein by reference.”).



(vi) **(i)(ii): Definition of “Force Majeure”.** If one of the following three options is elected as applicable, the corresponding option under the definition of “Force Majeure” will apply. If none are checked, Option A is deemed to apply.

Option A: Events or Circumstances

Option B: Events or Circumstances Affecting Applicable Tracking System or Banking System

Option C: Alternative Definition [If elected, specify alternative definition below]

(vii) **(i)(ii): Applicability of “Zero Dollars Sales Price Proviso” to Definition of “Sales Price”.** If elected as applicable, Zero Dollars Sales Price Proviso will apply to the definition of “Sales Price”. If not checked, election is deemed not applicable.

(viii) **Schedule RP: REC Product Definitions.** If elected as applicable, the alternative or supplemental provisions specified below will apply in lieu of or in addition to, as applicable, the provisions of Schedule RP.¹¹ If not checked, election is deemed not applicable.

(k) Implementation of Certain Amendments to the REC Annex

In connection with the REC Annex being incorporated into, and supplementing and forming a part of, this Agreement by words to such effect in the Schedule as set forth in clause (a)(ii), the following election on amendments to the REC Annex will also be set forth in the applicable sub-part of the Schedule.

¹² **Certain Amendments to the REC Annex.** If elected as applicable, the amendments specified below will apply. If not checked, election is deemed not applicable.

¹¹ **Note to Market Participants:** In addition to the publication of updates to Schedule RP, parties may also amend Schedule RP to modify the REC Product definitions under the Elective Provisions (or under the Confirmation for a REC Transaction).

¹² **Note to Market Participants:** Insert reference to applicable sub-part of the Schedule.



SCHEDULE RP: REC PRODUCT DEFINITIONS

REC Types¹³

“**Basic REC**”, “**Basic Renewable Energy Certificate**” or “**Basic Renewable Energy Credit**” means any certificate, credit, allowance, green tag or other transferable indicia, howsoever entitled, as defined in each Applicable Tracking System and Applicable Program specified in a REC Transaction, and related Reporting Rights, that are associated with the generation of a quantity of energy from a Renewable Energy Facility which is separate or capable of being separated from the energy generated.

“**Environmental Attribute**” means any and all aspects, benefits, certificates, claims, credits, allowances, emissions reductions, offsets and air quality, fuel or other environmental characteristics, howsoever entitled, resulting from the generation of energy from a Renewable Energy Facility, or the avoidance of any emission of any Greenhouse Gas or other gas, chemical or other substance to the air, soil or water attributable to such generation. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Renewable Energy Facility, production tax credits, investment tax credits or other financial incentives associated with the Renewable Energy Facility that are applicable to a state or federal income taxation obligation or other direct third-party subsidies, filed rates or feed-in tariffs for generation of energy by any Renewable Energy Facility or credits encumbered or used by the Renewable Energy Facility for its compliance with local, state, federal, international or foreign operating and/or air quality permits.

“**Renewable Energy Certificate**”, “**Renewable Energy Credit**” or “**REC**” means a Basic REC, Standard REC or other renewable energy certificate or renewable energy credit specified under the Elective Provisions or in a REC Transaction.¹⁴

“**Standard REC**”, “**Standard Renewable Energy Certificate**” or “**Standard Renewable Energy Credit**” means all Environmental Attributes, including any certificate, credit, allowance, green tag or other transferable indicia, howsoever entitled, as defined in each Applicable Tracking System and Applicable Program specified in a REC Transaction, and related Reporting Rights, that are associated with the generation of a quantity of energy from a Renewable Energy Facility which is separate or capable of being separated from the energy generated. If “Standard REC” is designated as the REC Type and an Applicable Tracking System is specified in a REC Transaction, then a REC Transfer or REC Retirement under such Applicable Tracking System of any such certificate, credit, allowance, green tag or other transferable indicia included in such “Standard REC” will constitute “Delivery” of the “Product”. If “Standard REC” is designated as the REC Type and an Attestation Transfer is specified in a REC Transaction, then an Attestation Transfer will constitute “Delivery” of the “Product”.

Delivery Obligations

¹³ **Note to Market Participants:** The definition for RECs and subordinate terms are located in Schedule RP instead of the body of the REC Annex, so that Schedule RP can be utilized as a tool by which (a) updates to Schedule RP can be published and (b) parties can modify Schedule RP under the Elective Provisions or in a REC Transaction, in each case, to create alternative or new REC definitions without having to update or modify the body of the REC Annex.

¹⁴ **Note to Market Participants:** For an overview of the legal nature of RECs, see Jeremy D. Weinstein, *What Are Renewable Energy Certificates?*, FUTURES & DERIVATIVES L. REP., Jan. 2021.



“**Firm**” means that either party is excused from any failure to Deliver or Receive Product without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the party to which performance is owed will be entitled to receive from the party that failed to Deliver or Receive any Product an amount determined in accordance with clause (c).

“**Unit Contingent**” means that Seller is excused from any failure to Deliver Product due to the inability of a Renewable Energy Facility specified in a REC Transaction to generate the amount of Product necessary to satisfy the obligations of Seller under such REC Transaction for the applicable Vintage or other time period indicated. In such event, Seller will not be liable to Buyer for any damages, including any amounts determined in accordance with clause (c)(i).

Applicable Tracking Systems

“**ERCOT Tracking System**” means the REC tracking system under the Texas Renewable Portfolio Standard administered by the Electric Reliability Council of Texas, Inc. (“**ERCOT**”), which includes a Generation Information System that tracks the certification, transfer and retirement of RECs among various entities, persons and accounts, as specified in Section 14 of the ERCOT Nodal Protocols.

“**M-RETS**” means the Midwest Renewable Energy Tracking System, which includes a Generation Information System that tracks the certification, transfer and retirement of RECs among various entities, persons and accounts, as specified in the Midwest Renewable Energy Tracking System Operating Procedures.

“**NEPOOL-GIS**” means the New England Power Pool Generation Information System, which includes a Generation Information System that tracks the certification, transfer and retirement of RECs among various entities, persons and accounts, as specified in the New England Power Pool Generation Information System Operating Rules.

“**NYGATS**” means the New York Generation Tracking System, which includes a Generation Information System that tracks the certification, transfer and retirement of RECs among various entities, persons and accounts, as specified in the New York Generation Tracking System (NYGATS) Operating Rules.

“**PJM GATS**” means the Generation Attribute Tracking System, which includes a Generation Information System that tracks the certification, transfer and retirement of RECs among various entities, persons and accounts, as specified in the Generation Attribute Tracking System (GATS) Operating Rules published by PJM-EIS.

“**WREGIS**” means the Western Renewable Energy Generation Information System, which includes a Generation Information System that tracks the certification, transfer and retirement of RECs among various entities, persons and accounts, as specified in the WREGIS Operating Rules.

Applicable Programs

“**Arizona Renewable Portfolio Standard**” or “**Arizona RPS**” means the Renewable Portfolio Standard enacted by the State of Arizona under A.A.C. R14-2-1801 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.



“**California Renewable Portfolio Standard**” or “**California RPS**” means the Renewable Portfolio Standard enacted by the State of California under CA Public Utilities Code § 399.11 *et seq.* and CA Public Resources Code § 25740 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Colorado Renewable Portfolio Standard**” or “**Colorado RPS**” means the Renewable Portfolio Standard enacted by the State of Colorado under C.R.S. 40-2-124, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Connecticut Renewable Portfolio Standard**” or “**Connecticut RPS**” means the Renewable Portfolio Standard enacted by the State of Connecticut under Conn. Gen. Stat. §§ 16-1 and 16-245a *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**CRS Listed™**” means the program administered by the Center for Resource Solutions (“**CRS**”) under which tracking attestations may be submitted to and approved by CRS to facilitate streamlined procurement for Green-e® Energy certification program participants (such tracking attestations submitted to CRS, “**Tracking Attestations**”). Approval of the Tracking Attestation by CRS does not mean that the facility, facility owner, facility’s output, or sale of facility’s output are, in fact, Green-e® Certified.

“**Delaware Renewable Portfolio Standard**” or “**Delaware RPS**” means the Renewable Portfolio Standard enacted by the State of Delaware under 26 Del. C. § 351 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**District of Columbia Renewable Portfolio Standard**” or “**District of Columbia RPS**” means the Renewable Portfolio Standard enacted by the District of Columbia under D.C. Code § 34-1431 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Green-e® Certified**” means the Green-e® Energy certification program administered by the Center for Resource Solutions (“**CRS**”) subject to CRS’s Green-e® Renewable Energy Standard for Canada and the United States (version 3.4 or its successor version).

“**Illinois Renewable Portfolio Standard**” or “**Illinois RPS**” means the Renewable Portfolio Standard enacted by the State of Illinois under 20 ILCS 3855/1-75 and 220 ILCS 5/16-115D, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Iowa Renewable Portfolio Standard**” or “**Iowa RPS**” means the Renewable Portfolio Standard enacted by the State of Iowa under Iowa Code § 476.41 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Maine Renewable Portfolio Standard**” or “**Maine RPS**” means the Renewable Portfolio Standard enacted by the State of Maine under 35-A M.R.S. § 3210, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Maryland Renewable Portfolio Standard**” or “**Maryland RPS**” means the Renewable Portfolio Standard enacted by the State of Maryland under Md. Public Utilities Code § 7-701 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.



“**Massachusetts Renewable Portfolio Standard**” or “**Massachusetts RPS**” means the Renewable Portfolio Standard enacted by the Commonwealth of Massachusetts under M.G.L. ch. 25A, § 11F, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Minnesota Renewable Portfolio Standard**” or “**Minnesota RPS**” means the Renewable Portfolio Standard enacted by the State of Minnesota under Minn. Stat. § 216B.1691, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Montana Renewable Portfolio Standard**” or “**Montana RPS**” means the Renewable Portfolio Standard enacted by the State of Montana under MCA 69-3-2001 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Nevada Renewable Portfolio Standard**” or “**Nevada RPS**” means the Renewable Portfolio Standard enacted by the State of Nevada under NRS 704.7801 *et seq.* and NAC 704.8831 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**New Hampshire Renewable Portfolio Standard**” or “**New Hampshire RPS**” means the Renewable Portfolio Standard enacted by the State of New Hampshire under New Hampshire Statutes, Chapter 362-F, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**New Jersey Renewable Portfolio Standard**” or “**New Jersey RPS**” means the Renewable Portfolio Standard enacted by the State of New Jersey under N.J. Stat. § 48:3-49 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**New Mexico Renewable Portfolio Standard**” or “**New Mexico RPS**” means the Renewable Portfolio Standard enacted by the State of New Mexico under N.M. Stat. § 62-16-1 *et seq.* and N.M. Stat. § 62-15-34 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**New York Renewable Portfolio Standard**” or “**New York RPS**” means the Renewable Portfolio Standard enacted by the State of New York under the Climate Leadership and Community Protection Act (S. 6599 / A. 8429), and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Ohio Renewable Portfolio Standard**” or “**Ohio RPS**” means the Renewable Portfolio Standard enacted by the State of Ohio under ORC 4928.64 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Oregon Renewable Portfolio Standard**” or “**Oregon RPS**” means the Renewable Portfolio Standard enacted by the State of Oregon under ORS 469A and ORS 757.375, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Pennsylvania Renewable Portfolio Standard**” or “**Pennsylvania RPS**” means the Renewable Portfolio Standard enacted by the Commonwealth of Pennsylvania under 73 P.S. § 1648.1 *et seq.* and 66 Pa.C.S. § 2814, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.



“**Rhode Island Renewable Portfolio Standard**” or “**Rhode Island RPS**” means the Renewable Portfolio Standard enacted by the State of Rhode Island under R.I. Gen. Laws §§ 39-26 and 39-26.1, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Texas Renewable Portfolio Standard**” or “**Texas RPS**” means the Renewable Portfolio Standard enacted by the State of Texas under Tex. Utilities Code Ann. § 39.904, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Vermont Renewable Portfolio Standard**” or “**Vermont RPS**” means the Renewable Portfolio Standard enacted by the State of Vermont under 30 V.S.A. § 8001 *et seq.*, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Virginia Renewable Portfolio Standard**” or “**Virginia RPS**” means the Renewable Portfolio Standard enacted by the Commonwealth of Virginia under the Virginia Clean Economy Act (HB 1526 / SB 851), and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Washington Renewable Portfolio Standard**” or “**Washington RPS**” means the Renewable Portfolio Standard enacted by the State of Washington under RCW 19.285 (Energy Independence Act), WAC 480-109 and WAC 194-37, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.

“**Wisconsin Renewable Portfolio Standard**” or “**Wisconsin RPS**” means the Renewable Portfolio Standard enacted by the State of Wisconsin under Wis. Stat. § 196.378, and any other related statutes, and any rules, regulations or other directives promulgated thereunder.



EXHIBIT A

REC TRANSACTION CONFIRMATION

This Confirmation confirms the agreement made between [] (“**Party A**”) and [] (“**Party B**”) as of the Trade Date referenced below concerning the purchase and sale of Renewable Energy Certificates (this “**REC Transaction**”).

This Confirmation supplements, forms a part of, and is subject to, the terms of the ISDA Master Agreement, dated as of [], between Party A and Party B (the “**Master Agreement**”). This Confirmation constitutes a “Confirmation” within the meaning of the Master Agreement and this Transaction constitutes a “REC Transaction” within the meaning of the REC Annex. In the event of any inconsistency between any provision of the Master Agreement and any provision of this Confirmation, the provision of this Confirmation will control for purposes of this REC Transaction. Capitalized terms used in this Confirmation and not otherwise defined will have the respective meanings assigned in the Master Agreement.

1. The terms of this REC Transaction to which this Confirmation relates are as follows:

Trade Date:	[]
Transaction Ref. No.:	[]
Seller:	[]
Buyer:	[]
Product:	
REC Type:	[Basic REC] [Standard REC] [Other]
Delivery Obligation:	[]
Applicable Tracking System:	[]
Applicable Program:	[]
[Renewable Energy Facility:	[]]
Vintage:	[]
[Quantity:	[]]
Contract Price:	[\$[]] per REC
Total Price:	[\$[]]
Delivery Date:	[]



Delivery Methodology: [REC Transfer] [REC Retirement] [Attestation Transfer]

Seller REC Account: [_____]

Buyer REC Account: [_____]

2. Additional terms applicable to this REC Transaction to which this Confirmation relates are as follows:¹⁵

[_____]: [_____]

¹⁵ **Note to Market Participants:** A potential approach for users of the REC Annex to bundle a REC Transaction with (a) the sale and purchase of energy under a Power Transaction (e.g., physical renewable energy sale) or (b) a swap (e.g., virtual power purchase agreement) is to prepare a single Confirmation for the integrated Transaction which sets forth the terms of such REC Transaction together with the terms of such Power Transaction and/or swap. The following are non-exclusive example approaches to preparing a single Confirmation for bundled Transactions:

SAMPLE A

1. **Transaction.** The particular Transaction to which this Confirmation relates consists of two Products. The following terms apply to both Products:
2. **Unit Contingent Energy Product.** The following terms apply solely to the Unit Contingent Energy Product, which also constitutes a Power Transaction:
3. **Unit Contingent REC Product.** The following terms apply solely to the Unit Contingent REC Product, which also constitutes a REC Transaction:
4. **Additional Terms.** Additional terms applicable to this Transaction to which this Confirmation relates are as follows:

SAMPLE B

1. **Transaction.** The particular Transaction to which this Confirmation relates consists of two Products. The following terms apply to both Products:
2. **As-Generated Energy Product.** The following terms apply solely to the As-Generated Commodity Swap Product:
3. **As-Generated REC Product.** The following terms apply solely to the As-Generated REC Product, which also constitutes a REC Transaction:
4. **Additional Terms.** Additional terms applicable to this Transaction to which this Confirmation relates are as follows:

Certain bundled Transactions may require additional modifications to clause (c) (e.g., to address (i) the potential that a bundled Power Transaction and REC Transaction may contain a single integrated Contract Price instead of two separate prices, (ii) the applicability of Replacement Price/Sales Price with respect to bundled Transactions, (iii) any necessary alignments with the Power Annex or (iv) other desired changes) and the definition of “Close-out Amount” (e.g., to implement any other applicable modifications, etc.), as well as other provisions, to reflect the terms of such bundled Transactions.



Please confirm your agreement to be bound by the terms of the foregoing by executing a copy of this Confirmation and returning it to us [within _____] [by _____].¹⁶

By: _____

Name: _____

Title: _____

Confirmed as of the date first above written:

By: _____

Name: _____

Title: _____

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