CARBON MITIGATION CREDIT AGREEMENT

THIS CARBON MITIGATION CREDIT AGREEMENT (the "CMC Contract") is entered into as of this ___ day of ~~-~~December_____, 2021 (the "Effective Date"), by and between _____ ("Seller" or "Party A") and Commonwealth Edison Company ("Buyer" or "Party B"). Each of Seller and Buyer is sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Illinois Power Agency ("IPA") issued a Request for Proposal (the "RFP") for Carbon Mitigation Credits ("CMCs") for which bid results were approved by the Illinois Commerce Commission on _____ December, 2021;

WHEREAS, Seller was a winning bidder with respect to the Facility selected through the RFP;

WHEREAS, pursuant to the RFP, Buyer and Seller agreed to enter into this CMC Contract to set forth the terms and conditions of the Transaction entered into by the Parties; and

WHEREAS, each of Buyer and Seller believes it is in its best interest to enter into this CMC Contract;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements contained in this CMC 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 Master CMC Agreement**.

a. Except as otherwise expressly set forth in this CMC Contract (and as otherwise amended, supplemented and modified herein), this CMC 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 ~~D~~C (hereinafter the "Master CMC Agreement") and such terms, as modified hereby, are incorporated herein by reference. For purposes of the definitions contained in the Master CMC Agreement, this CMC Contract shall constitute the "Transaction" and the "Cover Sheet," and the "Effective Date" shall constitute the "Trade Date." Capitalized terms used and not otherwise defined herein shall have the same meaning as in the Master CMC Agreement.

b. If the Parties have entered into another agreement that governs transactions other than the Transaction set forth in this CMC Contract, such other agreement shall not apply for the purposes of the Transaction confirmed under this CMC Contract, and this CMC Contract shall be treated as separate and stand-alone from all other transactions between the Parties. This CMC Contract shall apply solely for purposes of the Transaction specified herein and shall not apply for the purposes of any other transactions between the Parties. The terms of the Transaction are specified in this CMC Contract and there shall be no separate Confirmation or Product Order confirming the terms of the Transaction. References to "Confirmation" or "Product Order" in the Master CMC Agreement shall refer to this Cover Sheet.

2. **Additional Definitions**.

a. For purposes of Deliveries and payment, the following definitions shall apply:

(i) "CMC Monthly Price" with respect to a particular Vintage means the price for CMCs specified in the Payment Calculation Notice for such Vintage as calculated by the IPA and issued to Buyer and Seller. The CMC Monthly Price for a month

shall be applicable to all Delivered CMCs that have a Vintage of such month. The CMC Monthly Price shall be calculated consistent with the methodology set forth in the Carbon Mitigation Credit Procurement Plan as approved by the Illinois Commerce Commission in ICC Docket No. 21-0718.

(ii) "Delivery Month" means any of the calendar monthly periods within the Delivery Term for which CMCs are Delivered.

(iii) "Delivery Term" means the period starting on June 1, 2022 and ending on July 31, 2027, unless extended due to delays in the issuance or delays in transfer of CMCs by the Tracking System. Notwithstanding the foregoing, the Delivery Term shall end no later than October 31, 2027.

(iv) "Delivery Year" means the twelve (12) calendar months beginning with June of one calendar year through and including May of the following calendar year; provided that the first Delivery Year shall be deemed to be the period beginning on June 1, 2022 through May 31, 2023.

(v) "Delivery Year Actual Generation" means with respect to a Delivery Year, the actual generation of the Facility that occurred during such Delivery Year on a MWh basis, which shall be calculated using the hourly generation data provided by Seller for each month of such Delivery Year.

(vi) "Delivery Year Projected Generation" means with respect to a Delivery Year, the generation of the Facility projected for such Delivery Year on a MWh basis as specified in Table 1 of the Cover Sheet as such information is provided by Seller during the RFP process.

(vii) "Delivery Year Performance" means with respect to a Delivery Year, the measure calculated by the IPA within thirty (30) days following such Delivery Year, and which is used to determine if the Facility has met the Minimum Delivery Commitment for such Delivery Year. The Delivery Year Performance shall be the sum of the Delivery Year Projected Generation for the Delivery Years in which there is not yet any Delivery Year Actual Generation plus the Delivery Year Actual Generation of Delivery Years in which Delivery Year Actual Generation exists across each of the five Delivery Years from June 1, 2022 through May 31, 2027, divided by 5~~.~~, and rounded down to the nearest integer.

(viii) "Facility" means the nuclear reactor generating unit owned by Seller, which Pnode ID is identified in Table 1 of the Cover Sheet, that was selected through the RFP and from which the Product is sourced.

(ix) "Minimum Delivery Commitment" means the annual average generation of the Facility that Seller is committed to operate during the period June 1, 2022 through May 31, 2027 as specified in Table 1 of the Cover Sheet. For avoidance of doubt, the Minimum Delivery Commitment shall equal the multiplicative product of (a) 88%, (b) 8,760, and (c) the Facility's ~~summer MW capacity.~~Unit Summer Capacity (MW), rounded down to the nearest integer.

(x) "Payment Calculation Notice" means a notice that is issued by the IPA to Buyer and Seller within twenty-five (25) days of the end of each month of the period from June 1, 2022 through May 31, 2027 containing information related to the CMC Monthly Price of such month that has concluded. For the avoidance of doubt, the first Payment Calculation Notice shall be issued no later than July 25, 2022 related to the

CMC Monthly Price associated with CMCs that have a Vintage of June 2022.

(xi) "Shortfall CMC Quantity" means, with respect to a Delivery Year where the Delivery Year Performance is less than the Minimum Delivery Commitment, the result obtained by subtracting such Delivery Year Performance from the Minimum Delivery Commitment.

(xii) "Shortfall Payment Amount" means, with respect to a Delivery Year where the Delivery Year Performance is less than the Minimum Delivery Commitment, the lesser of: (a) the Collateral Requirement and (b) the result obtained by multiplying such Delivery Year's bid price as indicated in Table 1 of the Cover Sheet and the Shortfall CMC Quantity.

(xiii) "Subsidy" or "Subsidies" means, with respect to the period from June 1, 2022 through May 31, 2027, any federal tax credits, credits issued pursuant to a federal clean energy standard, and other federal credits, direct payments, or similar subsidy programs that support carbon-free generation from any unit of government applicable to the Facility ~~or~~and for which Seller is eligible to apply for in relation to the Facility.

~~(xi)~~(xiv) "Unit Summer Capacity (MW)" means the unit summer capacity for the Facility as specified in Table 1 of the Cover Sheet and indicated by Seller in the RFP.

~~(xii)~~(xv) "Vintage" means, with respect to each CMC, the month in which the applicable electricity generation occurred. For the avoidance of doubt, this definition shall also replace the definition of "Vintage" in the Master CMC Agreement.

3. **Product**

a. This CMC Contract is for ~~delivery~~Delivery of CMCs only and is not for energy or capacity or requiring physical delivery of such energy or capacity.

b. All CMCs Delivered shall be from net generation of electricity from the Facility delivered to the grid.

c. No payment shall be due for any CMC(s) that are related to net generation of electricity that occurred prior to June 1, 2022 or occurs after May 31, 2027 (such CMCs, "Ineligible CMCs"). Seller shall have no obligation to Buyer with respect to any Ineligible CMCs.

d. ~~All~~Subject to Section 11 of the Cover Sheet, all CMCs that are related to net generation of electricity from the Facility delivered to the grid that occurred during the period June 1, 2022 through May 31, 2027 must be Delivered to Buyer via an irrevocable Standing Order.

e. Each Delivery of a CMC shall be deemed a representation by Seller that the Product meets the requirements of this CMC Contract and the Applicable Program.

f. Buyer is under no obligation to return any Delivered CMCs to Seller regardless of whether payment is due to Seller for such CMCs or not.

g. All CMCs Delivered will be retired by Buyer. Buyer shall use commercially reasonable efforts to retire CMCs within one (1) month of such CMCs being Delivered. For avoidance of doubt, neither the transfer of title nor the retirement of a CMC in the Tracking System obligates Buyer to make payment to

Seller or Seller to make payment to Buyer for such CMCs.

4. **Minimum Delivery Obligation**.

With respect to each Delivery Year in the Delivery Term, the Facility's Delivery Year Performance must equal or exceed the Minimum Delivery Commitment. Failure of the Facility's Delivery Year Performance to meet the Minimum Delivery Commitment shall constitute an Event of Default. For avoidance of doubt, the Delivery Year Performance and Minimum Delivery Commitment shall be adjusted to account for any Suspension Period. The IPA shall determine if the Facility has met this requirement within thirty (30) days following the end of the Delivery Year. If it is determined by the IPA that the Facility has failed to meet this requirement, then IPA shall provide written notice of such failure to Buyer and Seller, and the Buyer shall notify the Seller of the Event of Default within ten (10) Business Days of receipt of such notice from the IPA.

Upon notifying the Seller of the occurrence of such Event of Default, ~~Buyer~~Seller shall ~~terminate this CMC Contract~~have ten (10) Business Days ~~after written notice by Buyer~~ to ~~Seller unless Seller demonstrates, within such ten (10) Business Day period and~~either demonstrate to the satisfaction of each of IPA and Buyer in their respective sole discretion, that such Event of Default has not occurred~~.~~, or to effect a cure by making a payment in the amount of the Shortfall Payment Amount. For the avoidance of doubt, if Seller cures such Event of Default by making payment in the amount of the Shortfall Payment Amount in a timely manner, then the Event of Default shall cease to be an Event of Default upon such payment. If Seller fails to demonstrate that such Event of Default has not occurred or fails to cure the Event of Default within ten (10) Business Days of Seller's receipt of Buyer's notice, then Buyer shall terminate this CMC Contract.

If Seller cures such Event of Default by making payment in the amount of Shortfall Payment Amount, then for purposes of calculating the Delivery Year Performance in future Delivery Years, the Delivery Year Actual Generation associated for the Delivery Year that failed to meet the Minimum Delivery Commitment shall be deemed to equal to the sum of the (a) Delivery Year Actual Generation and (b) the result obtained by multiplying the Shortfall CMC Quantity by five (5).

For such Event of Default~~,~~ (provided such Event of Default is not cured by Seller in accordance with the foregoing), Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement and any outstanding amounts that are due to Buyer related to the Delivery of CMCs or ~~Subsidy~~related to the value of any monetized Subsidy received by Seller. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to meet the Minimum Delivery Commitment, (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 shall be Buyer's sole and exclusive remedy in such Event of Default.

5. **Reporting Requirements**.

a. Seller shall, on a monthly basis, provide to Buyer and the IPA (i) hourly KWh generation data applicable to the pricing node ("Pnode") ID of the Facility and (ii) hourly day-ahead location marginal prices applicable to the Pnode ID of the Facility for each calendar month in the period from June 1, 2022 through May 31, 2027 within ten (10) Business Days of the end of each such month. This information provided shall be rounded to the sixth (6th) decimal place and shall be provided in Microsoft Excel format. The information provided will be considered final and will not be subject to reconciliation once it is verified for use for calculating the CMC Monthly Price by the IPA. For purposes of verification, Buyer and the IPA shall be granted read-only access of information for the Facility by Seller within PJM Power Meter system~~.~~; such data shall be treated and maintained as confidential and proprietary by the IPA and Buyer.

b. Seller shall provide to Buyer and the IPA written notice within ten (10) Business Days of its

application submission for a Subsidy detailing the nature and ~~amount~~value of such monetized Subsidy.

c. In the event that federal legislation is enacted or PJM market rules change is effected to accommodate ~~carbon pricing or other related known Subsidies~~any Subsidy, Seller shall notify IPA and the Illinois Commerce Commission of any such changes. Notwithstanding the foregoing, the Parties acknowledge that upon recognition of a credit or Subsidy or potential credit or Subsidy by the IPA through Seller or on its own, IPA will file notice of a credit or Subsidy with the Illinois Commerce Commission in Docket No. 21-0718, which may take the form of a compliance filing outlining the necessary changes to the CMC pricing calculation to include a line item representing the price adjustment in $/MWh or take the form of a petition to reopen the Carbon Mitigation Credit Procurement Plan approval proceeding in Docket No. 21-0718 to allow for the development of the record necessary for determining ~~what~~any CMC price change ~~shall result from the credit~~ or ~~Subsidy~~payment adjustment. The Parties agree for future amendments to this CMC Contract to comply with any future Illinois Commerce Commission Order on Reopening related to the foregoing.

d. With respect to each Delivery Year from June 1, 2025 through May 31, 2026 and Delivery Year from June 1, 2026 through May 31, 2027, if the minimum offer price applicable to the Facility due to the Minimum Offer Price Rule by PJM exceeds the clearing price applicable to the ComEd zone of the PJM Base Residual Auction, then Seller must provide notice of this fact to the IPA and the Illinois Commerce Commission through a filing made in the proceeding approving the Carbon Mitigation Credit Procurement Plan in Docket No. 21-0718 and accompanied by a verified statement to this effect from an officer of Seller. For each such Delivery Year, Seller shall work constructively with the Illinois Commerce Commission in ensuring that the Illinois Commerce Commission has all information necessary for making a determination of whether the capacity price should indeed be zero in the CMC price formula set forth in Section 1-75(d-10)(3)(C)(iii)(II) of the IPA Act.

e. Unless specified otherwise, information required in this section shall be provided to the appropriate contact listed on the Notice Section of the Cover Sheet.

6. **Payment**.

a. The CMC Monthly Price of each CMC Delivered will be based on the Vintage of such CMC as recorded by the Tracking System.

b. The CMC Monthly Price may be either positive or negative. Payment shall be made from Buyer to Seller if the CMC Monthly Price is positive and payment shall be made from Seller to Buyer if the CMC Monthly Price is negative. In instances in which a Party disputes the CMC Monthly Price calculated by the IPA, the Party has from the time the IPA issues notice to Buyer and Seller until the end of that month to request review of the pricing calculations. Pricing disputes may only be raised for differences greater than positive/negative ~~10~~5% of the CMC Monthly Price calculated by the IPA.

c. Payment shall be made only for CMCs of Vintages between June 1, 2022 and May 31, 2027 (inclusive) that have been Delivered by Seller to Buyer.

d. For each Delivery Month, Seller will render to Buyer an invoice for CMCs by electronic mail on or before the 20th day of the month immediately following each Delivery Month[1]. For avoidance of doubt, Seller shall invoice Buyer regardless of whether the CMC Monthly Price is positive or negative.

[1] For example, with respect to CMCs with a Vintage of June 2022, IPA shall issue the Payment Calculation Notice containing the CMC Monthly Price for such CMCs no later than July 25, 2022. CMCs with a Vintage of June 2022 are expected to be Delivered by the last Business Day of July 2022 via the irrevocable Standing Order and Seller shall issue its invoice to Buyer no later than August 20, 2022.

Notwithstanding, and subject to the foregoing, Seller may request that Buyer issue an invoice to Seller if the CMC Monthly Price is negative for documentary purposes. All invoices under this CMC Contract shall be due and payable on the last Business Day of the month in which the invoice is rendered or the last Business Day of the following month if the invoice is rendered late and cannot be processed by the last Business Day of the month in which the invoice is rendered. If in a Delivery Month, CMCs that are Delivered are from different Vintages, then Seller shall render to Buyer one invoice for each Vintage. Each invoice shall specify:

(i) the Delivery Month in which the CMC Deliveries were made;

(ii) the applicable CMC Monthly Price;

(iii) the Vintage of the CMCs Delivered;

(iv) the quantity of CMCs Delivered of the Vintage applicable to the CMC Monthly Price;

(v) the invoice amount to be paid for CMCs, which shall equal the multiplicative product of the CMC Monthly Price and the quantity of CMCs Delivered associated with the CMC Monthly Price; and

(vi) the Tracking System unit ID for the Facility.

e. If in a Delivery Year Seller has received the benefit of a Subsidy, Seller shall fully remit the ~~full~~ value of such monetized Subsidy to Buyer within thirty (30) days following the end of such Delivery Year to the extent that the value of such monetized Subsidy is not reflected in any prior CMC Monthly Price. In such a case, Seller shall render an invoice to Buyer by electronic mail on or before the 20th day of the month immediately following such Delivery Year. Notwithstanding, and subject to the foregoing, Seller may request that Buyer issue an invoice to Seller for documentary purposes, which shall be based upon Seller's invoice. ~~The invoice shall be due and payable on the last Business Day of the month in which the invoice is rendered or the last Business Day of the following month if the invoice is rendered late and cannot be processed by the last Business Day of the month in which the invoice is rendered. The invoice shall indicate:~~The invoice shall indicate:

(i) the Delivery Year in which the benefit of the Subsidy was received;

(ii) the ~~monetary~~ value of the monetized Subsidy; and

(iii) detailed information related to the nature of the Subsidy and calculation of the invoice amount.

f. All invoices issued by Seller related to the monthly Delivery of CMCs or related to the Subsidy shall include a certification that Seller has made commercially reasonable efforts to apply for federal tax credits, credits issued pursuant to a federal clean energy standard, and other federal credits, direct payments, or similar subsidy programs that support carbon-free generation from any unit of government applicable to the Facility and for which it is eligible to apply for in relation to the Facility.

g. Failure to make commercially reasonable efforts to apply for a Subsidy is an Event of Default. If it is determined by the IPA that Seller has failed to make commercially reasonable efforts to apply for a Subsidy, then IPA shall provide written notice of such failure to Buyer and Seller and identifying the Subsidy in its notice, and the Buyer shall notify the Seller of the Event of Default within ten (10) Business Days of receipt of such notice from the IPA. Upon Buyer notifying Seller of the occurrence of such Event of Default , Seller shall have ten (10) Business Days to either demonstrate to the satisfaction of the IPA in its reasonable discretion that such Event of Default has not occurred, or to effect a cure by making commercially reasonable efforts to apply for the Subsidy identified by the IPA to the extent it remains possible to apply for such Subsidy and providing the IPA all information reasonably available in connection

with Seller's efforts to apply for such Subsidy. For avoidance of doubt, if Seller cures such Event of Default in accordance with the foregoing, then the Event of Default shall cease to be an Event of Default upon the recognition by the IPA in its reasonable discretion of Seller's commercially reasonable efforts to apply for the Subsidy. If Seller fails to demonstrate that such Event of Default has not occurred or fails to cure the Event of Default within ten (10) Business Days of Seller's receipt of Buyer's notice, then Buyer shall terminate this CMC Contract. For such Event of Default (provided such Event of Default is not cured by Seller in accordance with the foregoing), Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement and any outstanding amounts that are due to Buyer related to the Delivery of CMCs or related to the value of any monetized Subsidy received by Seller. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to make commercially reasonable efforts to apply for the Subsidy, (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 shall be Buyer's sole and exclusive remedy in such Event of Default.

~~g.~~h. With respect to all payments due hereunder, the Party owing payments shall make payments by electronic funds transfer, or by other mutually agreed methods, to the account designated in the Notices section of the Cover Sheet or other such account as may be updated by written notice from Seller or from Buyer.

~~h.~~i. Notwithstanding the provisions of 6(b) of this Cover Sheet, ~~Buyer~~each Party may, in good faith, dispute the correctness of any invoice issued by ~~Seller~~the other Party under this Section 6 within three (3) months after receipt of such invoice. Any such 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 the Master CMC 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, shall bear interest at the Default Rate from the original due date of the invoice.

~~i.~~j. Any undisputed amounts not paid by the original due date of an invoice are delinquent and will accrue interest at the Default Rate. 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 within three (3) months after the invoice is rendered. This provision shall survive after the expiration of the term of this CMC Contract. If final resolution of the dispute is not completed within sixty (60) days after notification of the dispute, the Parties shall be entitled to pursue the remedies provided in Section 9.8 of the Master CMC Agreement.

~~j.~~k. ~~In~~Except as provided in Section 6(i) and (j) of the Cover Sheet, in no event will Buyer or Seller be liable whatsoever to ~~Seller~~the other Party for any payments of invoices issued after the expiration of the term of this CMC Contract.

~~k.~~l. The Parties acknowledge that Buyer is permitted to recover all costs incurred under or otherwise associated with this CMC Contract ("Buyer's Contract Costs") through tariff or tariffs filed with the Illinois Commerce Commission ("Cost Recovery Tariff"). Buyer's payment obligations under this CMC Contract shall be reduced dollar for dollar to the extent that Buyer is prohibited from recovering any portion of Buyer's Contract Costs. For the avoidance of doubt, in the event that Buyer is required to refund or otherwise credit to its customers amounts previously collected through its Cost Recovery Tariff in connection with the Buyer's Contract Costs (such refunded or credited amount, the "Refunded Amount"), Buyer shall be entitled to either (i) offset any future amounts due to Seller by an amount equal to the Refunded Amount or (ii) if no future amounts are due to Seller or if any such amounts are less than the Refunded Amount, invoice Seller for the Refunded Amount. Any amount invoiced to Seller under this section shall be due thirty (30) days from Seller's receipt of such invoice.

~~l.~~m. If at any point in time, Buyer is not permitted to or cannot recover Buyer's Contract Costs

from its customers through its Cost Recovery Tariff for any reason whatsoever, then, notwithstanding anything to the contrary in the Agreement, the obligations of Buyer (including payment for CMCs) and the obligations of Seller shall be immediately suspended upon written notice from Buyer to Seller.

(i) Buyer shall provide written notice to Seller at such time when Buyer is able to resume recovery of all of Buyer's Contract Costs through its Cost Recovery Tariff, whereupon the respective rights and obligations of Buyer and Seller under the CMC Contract shall resume as of the effective date indicated in such notice. No such suspension shall extend the Delivery Term or the term of this CMC Contract.

(ii) If a Suspension Period arising under this section continues for more than ~~seven~~three hundred ~~thirty (730~~sixty-five (365) consecutive days, then Buyer shall terminate this CMC Contract upon written notice to the Seller and neither Party shall have any further liability to the other except for those liabilities arising prior to the date of such termination.

7. **Environmental Attributes and Verification.**

The Product is CMC. 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 CMC Contract. For the avoidance of doubt, any CMC Delivered hereunder must meet the definition of "Carbon Mitigation Credit" under the IPA Act.

8. **Facility Information.**

Table 1

Facility Information	(a) Facility (i) Station Name: (ii) Location: (iii) Reactor Unit: (b) Pnode ID: (c) Unit Summer ~~MW~~ Capacity~~:~~ (MW): _____ MW (d) Delivery Year Bid Price: June 1, 2022 – May 31, 2023: _____ per CMC June 1, 2023 – May 31, 2024: _____ per CMC June 1, 2024 – May 31, 2025: _____ per CMC June 1, 2025 – May 31, 2026: _____ per CMC June 1, 2026 – May 31, 2027: _____ per CMC (e) Minimum Delivery Commitment: _____ MWh (i.e., 88% x 8,760 x Unit Summer ~~MW~~ Capacity (MW), rounded down to nearest integer) (f) Delivery Year Projected Generation: June 1, 2022 – May 31, 2023: _____MWh June 1, 2023 – May 31, 2024: _____MWh June 1, 2024 – May 31, 2025: _____MWh June 1, 2025 – May 31, 2026: _____MWh June 1, 2026 – May 31, 2027: _____MWh (g) Energy Price Index selected pursuant to Section 1-75(d-10)(3)(C)(iii)(I) of IPA Act: [ ] (aa) weighted average day-ahead price at Pnode ID [ ] (bb) projected energy price for NIHUB

a. The Product is Facility specific; CMCs Delivered must be from the Facility specified in Table 1 and Seller represents that:

i. As of the Effective Date and as of the date of each Delivery hereunder, the Facility meets the definition of "Carbon-free Energy Resource" under Section 1-75(d-10) of the IPA Act.

ii. As of the Effective Date and as of the date of each Delivery hereunder, the operating license of the Facility issued by the Nuclear Regulatory Commission has not been terminated or suspended.

iii. As of the date of each Delivery hereunder, the Product has not and shall not be used by Seller or another party to comply with another portfolio or standard, including but not limited to, the renewable portfolio standard set forth in Section 1-75(c) of the IPA Act or the clean coal portfolio standard set forth in Section 1-75(d) of the IPA Act or the zero emission standard set forth in Section 1-75(d-5) of the IPA Act.

iv. As of the Effective Date, it does not have actual knowledge of or reasonably ~~foresee~~foresees any capital expenditures required for the Facility in excess of $40,000,000 that a prudent owner or operator of a similar facility would not undertake.

v. As of the Effective Date and as of the date of each Delivery hereunder, Seller has made commercially reasonable efforts to apply for ~~federal tax credits, direct payments, or similar subsidy programs that support carbon-free generation and for which it is eligible to apply~~

~~for in relation to the Facility~~all Subsidies.

vi. As of the Effective Date and throughout the term of this CMC Contract, Seller is committed to continue operating the Facility in such manner that the Delivery Year Performance of each Delivery Year is at least equal to the Minimum Delivery Commitment unless excused by Force Majeure, by an Event of Default of Buyer, Suspension Period or unless made impracticable as a result of compliance with law or regulation.

b. Non-compliance with any of the above provisions shall constitute an Event of Default. If Seller is determined by the IPA not to be in compliance with any of the provisions above, then upon the occurrence of such determination, the IPA shall provide written notice of such non-compliance to Buyer and Seller. ~~Buyer shall notify the Seller of the Event of Default within ten (10) Business Days of receipt of such notice from the IPA.~~

Buyer shall notify the Seller of the Event of Default within ten (10) Business Days of receipt of such notice from the IPA.

Upon notifying the Seller of the occurrence of such Event of Default related to items (i) through (iv) above, Buyer shall terminate this CMC Contract ten (10) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such ten (10) Business Day period and to the satisfaction of Buyer in its sole discretion, that such Event of Default has not occurred.

For non-compliance with any of the requirements specified in (i) through (~~vi~~iv) above, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement and any outstanding amounts that are due to Buyer related to the Delivery of CMCs or Subsidy. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with one or more of the above requirements, (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 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with one or more of the above requirements.

For an Event of Default related to items (v), Section 6(g) of this Cover Sheet shall govern. For an Event of Default related to item (vi), Section 4 of this Cover Sheet shall govern.

9. **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 Carbon Mitigation Credit Program, as established under 20 Ill. Comp. Stat. 3855/1-75(d-10), is the Applicable Program for this CMC Contract. All CMCs Delivered by Seller under this CMC Contract must allow Buyer to meet its obligations under the Applicable Program. The Product is Regulatorily Continuing.

10. **CMC 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.

11. **Tracking System**.

a. The Parties will use PJM-EIS GATS as the tracking system for the Product. The Parties shall work together to establish an irrevocable Standing Order for the Facility for the automatic recurring transfer of CMCs to Buyer's account in PJM-EIS GATS.

b. The irrevocable Standing Order shall be for the automatic recurring transfer of all CMCs having a Vintage of June 1, 2022 through May 31, 2027 (inclusive).

c. Seller, as transferor of the ~~RECs~~CMCs, shall initiate the irrevocable Standing Order request within the PJM-EIS GATS by May 1, 2022. Buyer, as transferee, shall accept the properly submitted Irrevocable Standing Order request within the PJM-EIS GATS by June 1, 2022.

d. Seller shall Deliver the CMCs in an unretired state. Buyer shall retire CMCs Delivered from the Facility by the month after the receipt of such CMCs in Buyer's PJM-EIS GATS account. Buyer is not responsible for, and is under no obligation to return, any inadvertent transfer of Ineligible CMCs.

e. The Parties shall abide by the applicable rules of PJM-EIS GATS. Seller shall take all actions necessary to ensure creation of CMCs and CMC Delivery through the irrevocable Standing Order. Each Party shall bear the costs associated with performing its respective obligations in connection with such tracking system.

f. Buyer and Seller shall work together to remove the Standing Order within ten (10) Business Days after the last Delivery of CMCs for the Delivery Term has occurred. Buyer and Seller shall work together to suspend the irrevocable Standing Order within ten (10) Business Days of the effective date of any Suspension Period and to lift such suspension once the Suspension Period has ended.

g. Seller represents that the CMCs have been designated as "IL CMC Program eligible" or equivalent by the Tracking System, prior to transferring the CMCs to the Buyer's Tracking System account.

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

a. **Notices.**

Party A: _____

All Notices:
Street:
City:

Attn:
Phone:
Email:
Federal Tax ID Number:

Invoices:
Attn:
Phone:
Email:

With a copy to:
Attn:
Phone:
Email:

Payments:
Attn:
Phone:
Email:

Party B: _____

All Notices:
Street:
City:

Attn:
Phone:
Email:
Federal Tax ID Number:

Invoices:
Attn:
Phone:
Email:

With a copy to:
Attn:
Phone:
Email:

Payments:
Attn:
Phone:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

ACH Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:
Phone:
Email:

Generation/Price/Subsidy Reporting:
Attn:
Phone:
Email:

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

Attn:
Phone:
Email:

Wire Transfer:
BNK:
ABA:
ACCT:

ACH Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:
Attn:
Phone:
Email:

Generation/Price/Subsidy Reporting:
Attn:
Phone:
Email:

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

Attn:
Phone:
Email:

Information to IPA to:
Attn:
Phone:
Email:

b. All references to "Renewable Energy Certificate" or "Renewable Energy Credit" shall be replaced with "Carbon Mitigation Credit; all references to "REC" shall be replaced with "CMC"; all references to "Renewable Energy Facility" shall be replaced with "Facility"; and all references to "Renewable Energy Source" shall be replaced with "Carbon-free Energy Resource" throughout the entire Master CMC Agreement. For avoidance of doubt, the replacement of such terms in the singular includes the replacement of such terms in the plural where appropriate.

c. The following changes are made to Article 1: Definitions of the Master CMC Agreement.

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 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 1.15.~~2~~1:

""Collateral Requirement" shall be an amount equal to the multiplicative product of (i) $0.80 and (ii) the Minimum Delivery Commitment."

~~The following is added as Section 1.15.3:~~

~~"CMC Monthly Price" means, with respect to a Vintage, the price for CMCs associated with such Vintage, which shall be calculated by the IPA and specified in the Payment Calculation Notice issued by the IPA to Buyer and Seller covering such Vintage.~~

The definition of "Credit Rating" in Section 1.18 is replaced in its entirety with the following:

""Credit Rating" means, with respect to Seller or Seller's Guarantor, as applicable, the rating then assigned to such entity's unsecured, senior long-term debt obligations (excluding, however, any debt obligations that are supported by specific third party credit enhancement that would not apply to payment obligations under this Agreement) 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 default rating by Fitch, or the issuer rating by Moody's, or the corporate issuer rating or corporate credit rating by S&P if such entity is a U.S. utility operating company with an investment grade rating, or the corporate issuer rating or corporate credit rating, discounted one notch, by S&P if such entity is not a U.S. utility operating company with an investment grade rating; provided, however, that in the event Seller (or Seller's Guarantor, if applicable) is rated by only one rating agency, that rating will be used. If Seller, or its Guarantor, is rated by only two rating agencies, and the ratings are split, the lower rating will be used. If Seller, or its Guarantor, is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that in the event that the two highest ratings are common, such common rating will be used."

The following is added as Section 1.19.~~3~~1:

""Default Rate" means a rate per annum equal to one (1) percent over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates.""

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 by Seller to Buyer's PJM-EIS GATS account through the established irrevocable Standing Order."

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

""Delivery Date" means the scheduled date for the transfer of CMCs each month pursuant to an irrevocable Standing Order."

The following is added as Section 1.29.~~2~~1:

""Fitch" means Fitch Ratings Ltd."

The definition of "Guarantor" in Section 1.35 is replaced in its entirety with the following:

""Guarantor" means the party named as the Guarantor in the Guaranty."

The following is added as Section 1.35.1:

""Guaranty" means an irrevocable and unconditional guaranty made by Seller's Guarantor, in the form attached hereto as Exhibit ~~B~~A with such options as elected therefrom."

The following is added as Section 1.35.2:

""Guaranteed Obligations" means any contract entered into by Seller or affiliates of the Seller with Buyer that are in effect during any Delivery Year, and for which Seller or Seller's Guarantor is granted an unsecured line of credit from Buyer."

The following is added as Section 1.35.3:

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

The following is added as Section 1.37.1:

""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 ~~C~~B to the CMC Contract."

The definition of "Moody's" in Section 1.39 is replaced in its entirety with the following:

""Moody's" means Moody's Investors Service, Inc."

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.~~2~~1:

""Public Utilities Act" means the Illinois Public Utilities Act, 220 ILCS 5."

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

""Regulatorily Continuing" means, with respect to the 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 definition of "Renewable Energy Certificate" or "REC" in Section 1.54 is replaced in its entirety with the following:

"Carbon Mitigation Credit" or "CMC" means a tradable credit that represents the carbon emission reduction attributes of one megawatt-hour of energy produced from the Facility.

The definition of "Renewable Energy Facility" in Section 1.55 is replaced in its entirety with

the following:

> "Facility" means a generating unit that is specified in Table 1 of the Cover Sheet.

The definition of "Renewable Energy Source" in Section 1.56 is replaced in its entirety with the following:

> "Carbon-free Energy Resource" means an electric energy source that is derived from nuclear fuel of a generating unit that is interconnected with PJM Interconnection, LLC or its successor.

The definition of "S&P" in Section 1.59 is replaced in its entirety with the following:

> ""S&P" means S&P Global Ratings."

The following is added as Section 1.62.1:

> "Standing Order" means, with respect to the Facility, an agreement registered with PJM-EIS GATS for the automatic transfer of CMCs issued for the Facility to Buyer's ~~Account~~PJM-EIS GATS account on a recurring basis in accordance with Section 11 of the Cover Sheet.

The following is added as Section 1.62.2:

> "Suspension Period" means the period of time during which the obligations of the Parties under this CMC Contract are suspended in accordance with Section 6 of the Cover Sheet or Article 6 of the Master CMC Agreement.

d. The following changes are made to Article 2:

Section 2.1 (Transactions) shall not apply.

Section 2.2 (Payment) shall not apply. Payments under this CMC Contract shall be made pursuant to Section 6 of the Cover Sheet.

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~~section and delete the last sentence of Section 2.8.

Section 2.9 (Scope of Agreement) shall not apply.

e. 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".

f. The following changes are made to Article 4:

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:

"4.3 Performance Assurance.

(a) Seller will be required to post Performance Assurance with respect to this Agreement, in an aggregate amount equal to the Collateral Requirement less the applicable Collateral Threshold Amount (as defined below) within three (3) Business Days of notice from Buyer.

(b) "Collateral Threshold Amount" means, with respect to Seller or its Guarantor, if applicable, the amount determined in accordance with Table A below; provided that:

(i) for the applicable Credit Rating within Table A, Collateral Threshold Amount for such party shall be the lesser of that party's applicable percentage of Tangible Net Worth or the amount shown as the Credit Limit; and provided further, that in the event Seller or its Guarantor is (a) only rated by one credit rating agency, such Credit Rating will apply; (b) rated by two credit rating agencies, the lower of the two Credit Ratings will apply; (c) rated by all three credit rating agencies, then the lower of the two highest Credit Ratings will apply; (d) in the event that the two highest Credit Ratings are common, such common Credit Rating will apply; and (e) if none of Moody's, S&P nor Fitch assign a Credit Rating to Seller or its Guarantor, as applicable, the Collateral Threshold Amount shall be zero;

(ii) if Seller is relying on a Guarantor and such Guarantor has provided a corporate guaranty, the Collateral Threshold Amount shall be the lesser of the Collateral Threshold Amount as determined by Section 4.3(b)(i) above or the amount of such corporate guaranty; provided, that Seller's Guarantor will be granted a single Collateral Threshold Amount to be applied to all credit exposure or collateral or security amounts (however defined) arising under any Guaranteed Obligations for which it guarantees payment obligations on behalf of one or more parties to such Guaranteed Obligations;

(iii) if Seller is relying on its own financial standing, Seller will be granted a single Collateral Threshold Amount to be applied across this Agreement and all other credit exposure or collateral or security amounts (however defined) arising under any Guaranteed Obligations to which it is a party. The maximum level of the Collateral Threshold Amount to be provided to Seller will be determined in accordance with Table A below. If Seller has one or more Affiliates that are parties to a Guaranteed Obligations ("GO Affiliates") with Buyer, Seller and its GO Affiliate(s) will each be granted a separate, standalone Collateral Threshold Amount. In this case, Seller's Collateral Threshold Amount will be the lower of

(a) the appropriate Credit Limit as shown in Table A; and (b) an amount determined by dividing the appropriate Credit Limit as shown in Table A for Seller by the sum of the appropriate Credit Limits applicable for Seller and each GO Affiliate and multiplying such amount by $80,000,000; and

(iv) upon the occurrence and during the continuance of an Event of Default or Potential Event of Default with respect to Seller, the Collateral Threshold Amount shall be zero.

Table A

Credit Rating			**Collateral Threshold Amount** (the lesser of the following)	
S&P	Moody's	Fitch	Percent of Tangible Net Worth	Credit Limit
A- and above	A3 and above	A- and above	16%	$80,000,000
BBB+	Baa1	BBB+	10%	$60,000,000
BBB	Baa2	BBB	8%	$40,000,000
BBB-	Baa3	BBB-	6%	$20,000,000
Below BBB-	Below Baa3	Below BBB-	0%	$0

"

Section 4.4 shall not apply.

Section 4.5 is replaced in its entirety with the following:

"Guarantee. If Seller is relying on a Guarantor for purposes of its Collateral Threshold in accordance with Section 4.3, then Seller will provide, concurrently with the execution and delivery of the CMC Contract, a Guaranty."

g. Cross-Default Threshold for each of Buyer and Seller is $50,000,000.

h. The following changes are made to Article 5:

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

"failure to Deliver or to receive Product with Vintages between June 1, 2022 through May 31, 2027."

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 ten (10) 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 to add the following to the end thereof:

"or the failure of the issuer of the Letter of Credit to maintain during the term of this Agreement 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)."

Subsection (h) of Section 5.1 is amended by replacing "with respect to such Party's Guarantor, if any:" with "with respect to such Party's Guarantor, if any, the occurrence of any of the following (provided that Seller does not post Seller's Performance Assurance in an amount equal to the Collateral Requirement within ten (10) Business Days):"

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

> "(i) the failure of Seller to meet the Minimum Delivery Commitment for any Delivery Year as set forth in Section 4 of the Cover Sheet;"

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

> "(j) the failure of Seller to comply with the reporting requirements set forth in Section 5 of the Cover Sheet;"

Section 5.2 is replaced in its entirety with the following:

> "Except as otherwise set forth in this Agreement, 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 liquidate and terminate all 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 a Settlement Amount with respect to each Facility and a Termination Payment with respect to this Agreement pursuant to Section 5.3 as of the Early Termination Date, and provide such calculation to the Defaulting Party by the Early Termination Date."

Section 5.3 is replaced in its entirety with the following:

"(a) In the Event of Default with respect to Buyer as the "Defaulting Party", the following shall occur:

(i) Buyer shall return Seller's Performance Assurance held by Buyer by the date the Termination Payment is due;

(ii) Seller shall calculate a Settlement Amount for CMCs that were Delivered but were not yet paid by Buyer or Seller, as applicable, based on the applicable CMC Monthly Price less the value of any monetized Subsidy not yet remitted to Buyer; and

(iii) the Settlement Amounts so calculated, if any shall be the Termination Payment and the Termination Payment, if any, is due to Seller as the Non-Defaulting Party within twenty (20) Business Days following notice by Seller to Buyer pursuant to Section 5.2.

(b) In the Event of Default with respect to Seller as the "Defaulting Party", the following shall occur:

(i) Buyer shall calculate a Settlement Amount as the sum of:

(A) Collateral Requirement;

(B) Any outstanding amounts related to CMCs due to Buyer net of any amounts due from Buyer, as applicable; and

(C) Notwithstanding the provisions of Section 6(e) of the Cover Sheet, any outstanding amounts related to Subsidy received by Seller and not remitted to Buyer.

(ii) the Settlement Amount so calculated, if any, shall be the Termination Payment and the Termination Payment, if any, is due to Buyer as the Non-Defaulting Party within twenty (20) Business Days following notice by Buyer to Seller pursuant to Section 5.2. Unless Seller pays the Termination Payment in full during this twenty (20) Business Day period, Seller's Performance Assurance held by Buyer shall be applied to the Termination Payment, with any excess Performance Assurance amounts returned to Seller.

(c) For avoidance of doubt, the Non-Defaulting Party shall not owe any amount as Termination Payment to the Defaulting Party and payment of the Termination Payment shall only be from the Defaulting Party to the Non-Defaulting Party."

Section 5.5 is amended by replacing "any or all Transactions" with "this Agreement" in the third line, 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."

A new Section 5.8 is added to the Master CMC Agreement as follows:

"5.8. Setoff. Upon the occurrence of an Event of Default with respect to a Party ("X"), the other Party ("Y") will have the right (but not be obliged) without prior notice to X or any other person to set-off or apply any obligation of X owed to Y (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any

obligation of Y owed to X (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation). Y will give notice to X of any setoff effected hereunder. If any obligation is unascertained, Y may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. Nothing herein shall be deemed to create a charge or other security interest. This provision shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

i. 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, upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure to the other Party and to the IPA 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~~If Buyer is the Claiming Party, then Seller will have until the end of the fifth (5th) Business Day following such receipt to notify ~~the Claiming Party~~Buyer that it objects to or disputes the existence of Force Majeure. If Seller is the Claiming Party, then the claim shall be subject to the confirmation by the IPA and the IPA shall have until the end of the tenth (10th) Business Day to confirm or dispute 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 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. For the avoidance of doubt, Seller shall be excused from its performance under this Agreement for any cause beyond the control of Seller, including, but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of commercially reasonable efforts, Seller could not reasonably have been expected to avoid, and which, by the exercise of commercially reasonable efforts, Seller has been unable to overcome. ~~In such event,~~The Parties acknowledge that unforeseen events directly related to the global pandemic caused by COVID-19 (including the virus designated SARS-CoV-2 or any mutations thereof), including shutdowns mandated by any Governmental Authority, border closures, and isolation/quarantine orders or requirements, including with respect to Seller's contractors, subcontractors or vendors, may constitute an event of Force Majeure, provided that any such event shall meet the requirements of this definition. Seller shall be excused from performance for the duration of the event, including, but not limited to, Delivery of CMCs, and no payment shall be due to Seller during the duration of the Suspension Period."

j. 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, 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, subject to Section 6(~~k~~l) and 6(~~l~~m) of the Cover Sheet, 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 a final and non-appealable Government Action renders Delivery illegal or unenforceable under Applicable Law or the Applicable Program is found to be illegal or unenforceable, this Agreement shall be promptly terminated, which shall be within twenty (20) Business Days of notice from either Party informing the other Party by written notice of such Government Action, and any unpaid CMCs Delivered shall be returned to Seller by Buyer, 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."

k. Governing Law (Article 8) is the law of the State of Illinois, without regard to principles of conflicts of law.

l. The following changes are made to Article 9:

Section 9.1 is replaced in its entirety with the following:

"9.1 Term and Termination.

(a) The term of this Agreement shall commence on the Effective Date and remain in effect until December 31, 2027; unless terminated earlier as provided in Section 5.2 or as provided in Section 9.1(b) of the Master CMC Agreement.

(b) Seller may elect to terminate this Agreement upon the occurrence of any of the following events:

(i) legislation is enacted into law by the General Assembly of Illinois that imposes or authorizes a new tax, special assessment, or fee on the generation of electricity, the ownership or leasehold of a generating unit, or the privilege or occupation of such generation, ownership, or leasehold of generation units; provided that such termination right shall not apply in the case of any generally applicable tax, special assessment or fee, or requirements imposed by federal law; or

(ii) the Facility requires capital expenditures in excess of $40,000,000 that

a prudent owner or operator of a similar facility would not undertake and Seller did not have actual knowledge of or should not have reasonably foreseen the need to make such capital expenditure; or

(iii) the operating license for the Facility is terminated by the Nuclear Regulatory Commission.

Any such election to terminate shall be made by written notice to Buyer, the IPA and the Illinois Commerce Commission, which notice shall refer to the provision of this Agreement under which such election is being made and provide all necessary details regarding the circumstances giving rise to the ability to make that election. Such election shall be effective upon receipt of the written notice by Buyer. In the event of such termination, neither Party shall have any further liability to the other except for those liabilities arising prior to the date of such termination."

Section 9.2 is replaced in its entirety with the following:

"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, conditioned or delayed; provided, however, either Party may, without the consent of the other, (i) pledge, encumber or collaterally assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (but, in the case of Section 9.2(i) only, 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 the case of an assignment pursuant to Section 9.2(ii) and (iii), any such assignee must, prior to any assignment, agree in writing to be bound by the terms and conditions hereof and the transferring Party must deliver such tax and enforceability assurance as the non-transferring Party may reasonably request and, in the case of an assignment pursuant to Section 9.2(i), the non-transferring Party must give notice to the other Party within ten (10) days of any such collateral assignment. 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 this Agreement by facsimile or electronic means shall be effective as delivery of a manually executed counterpart of this Agreement. Electronic or fax copies of executed original copies of this Agreement shall be sufficient and admissible evidence of the content and existence of this Agreement 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 Guarantors, 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 one (1) 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 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."

m. Exhibits A through ~~D~~C and the Guidance Notes attached to the end of the Master CMC Agreement shall not apply.

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

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

_____	_____
("Party A" or "Seller")	("Party B" or "Buyer")
Signed:_____	Signed:_____
Name:_____	Name: _____
Title: _____	Title: _____

~~Exhibit A~~

~~[RESERVED]~~

EXHIBIT ~~B~~A (Commonwealth Edison Company)

Form of Guaranty

THIS GUARANTY (this "Guaranty"), dated as of _____ , 20__, is made by _____(the "Guarantor"), a _____organized and existing under the laws of _____, in favor of Commonwealth Edison Company (the "Guaranteed Party"), a corporation organized and existing under the laws of the State of Illinois.

Terms not defined herein shall have the meanings given to them in the CMC Contract dated _____, 20__(as amended, modified or extended from time to time, the "Agreement"), between the Guaranteed Party and _____ _____, a _____ organized and existing under the laws of _____ (the "Seller"). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement entered into with the Seller pursuant to the RFP. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party, upon written demand, the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the Seller to the Guaranteed Party arising out of the Agreement. Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall

   [ ] *Option 1* [in no event exceed $____.]

   [ ] *Option 2* [in no event exceed the Collateral Requirement less the value of other liquid securities posted by the Seller under the Agreement.]

   All such principal, interest, obligations and liabilities, collectively, are the "Guaranteed Obligations". This Guaranty is a guarantee of payment and not of collection.

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

3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, the Agreement with respect to the Guaranteed Obligations or any person (including the Seller) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party including any security therefor.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Seller concerning any provision of the Agreement governing any of the Guaranteed Obligations of the Seller; (b) the rendering of any judgment against the Seller or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to the Agreement or the Guaranteed Obligations agreed to from time to time by the Seller and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Seller or the

Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Seller, its assets or the Guarantor; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Seller, the Guaranteed Party, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; and (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same.

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

6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing Guaranty and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party, which consent shall not be unreasonably withheld or delayed; and provided further that the Guarantor may, without the prior written consent of the Guaranteed Party, assign all of its rights and obligations under this Guaranty to an entity that has succeeded to the Guarantor by merger or by purchase of all or substantially all of the assets of the Guarantor and, in either case, has expressly assumed in writing all of the obligations of the Guarantor under this Guaranty. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement.

9. Other than as provided in this Guaranty, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.

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

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally paid, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the

Guaranteed Party of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully paid.

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

If to the Guarantor: [To be completed with a U.S. address. If the Guarantor is not domiciled in the U.S., the address for its U.S.-based agent for service of process must be provided.]

If to the Guaranteed Party: [To be completed]

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

14. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Illinois (without regard to conflict of law principles that would require the application of the substantive law of any other jurisdiction). The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreement(s) between the Guaranteed Party and the Guarantor with

respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. Notwithstanding anything to the contrary contained herein or in the Agreement, but excepting any express remedy set for in the Agreement, the Guarantor shall in no event be required to pay or be liable to the Guaranteed Party for any consequential, indirect or punitive damages, opportunity costs or lost profits.

18. Nothing herein is intended to deny to the Guarantor, and it is expressly agreed that the Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights which Seller is or may be entitled arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement.

Accepted and Agreed to:

[GUARANTOR]

Signature: _____

Name: _____

Title: _____

Date: _____

Acknowledged and Accepted:

Commonwealth Edison Company

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT ~~B~~A (Commonwealth Edison Company)
Schedule 1 – Foreign Guarantor Requirement

An entity that is proposing to serve as a Guarantor under a Guaranty, but that has not been formed or organized under the laws of a state of the United States or the District of Columbia, must meet the following additional requirements in order to be recognized as an acceptable Guarantor:

1. Such entity must deliver a legal opinion ("*Opinion*") of a law firm or a counsel, in either case who is not an employee of such entity or any of its affiliates or subsidiaries and who is authorized and qualified to practice law and render legal opinions in the foreign jurisdiction in which such entity is formed or organized. The Opinion shall meet the minimum content requirements specified below.

2. Such entity must deliver the sworn certificate of the corporate secretary (or similar or comparable officer) of such entity that the person executing the Guaranty on behalf of such entity has the authority to execute the Guaranty on behalf of such entity and that the governing board of such entity has approved the execution and delivery of the Guaranty.

3. Such entity must deliver the sworn certificate of the corporate secretary (or similar or comparable officer) of such entity that such entity has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

4. Such entity must maintain an agent for acceptance of service of process in the United States. By executing and delivering the Guaranty, such entity agrees that service of any process in any claim or proceeding relating to the Guaranty may be made or served upon such entity by United States mail (postage prepaid).

5. The country in which such entity is domiciled must have a long-term sovereign (or equivalent) rating of AA+/Aa1 from at least two of the following rating agencies: S&P, Moody's or Fitch. Each rating agency's sovereign rating for the domicile country will be considered to be the lowest of: country ceiling, senior unsecured government debt, long-term foreign currency sovereign rating, long-term local currency sovereign rating, or other equivalent measure.

6. Such entity must pay for all expenses incurred by Party B related to reviewing and acceptance of the documents to be delivered with the Guaranty as provided in paragraphs 1 to 3 (inclusive) above; provided, however, that such payment shall not exceed $10,000.

Once the Opinion has been provided and accepted as sufficient by Party B, in lieu of repeating the above process, the proposed Guarantor may re-certify its status in a subsequent procurement event if there have been no changes that would have altered that Opinion. To re-certify, the proposed Guarantor must provide a current letter by its Corporate Secretary (or equal / higher Corporate Officer) that it certifies that there have been no changes in its status which would adversely affect the enforceability of the Guaranty, since the time that the original Opinion was rendered.

Party B shall have sole and absolute discretion, without liability or recourse to the proposed Guarantor or Party A, to evaluate the sufficiency of the documents submitted by such proposed Guarantor pursuant to the requirements of this Schedule 2B. The following minimum requirements are to be met by the Opinion mentioned in paragraph 1 above:

(a) The Opinion must be in English.

(b) The Opinion should contain a recitation of the documents that have been reviewed by such counsel as a basis for the opinions expressed. Such recitations should include statements that (i) counsel has reviewed the organizational documents for the entity in question and has reviewed the legal requirements and agreement(s) in question (i.e., the CMC Contract, the Guaranty, the Rules and associated Appendices, Exhibits and Schedules), (ii) counsel has considered any necessary corporate, regulatory or governmental authorizations or approvals that may be required as a condition to the entity entering into and performing the Guaranty and (iii) counsel has reviewed evidence provided by the entity, which evidence has been satisfactorily identified or certified to counsel, of such corporate, regulatory and governmental authorizations or approvals.

(c) Based upon the review described in the preceding paragraph (b), the Opinion should reach the legal conclusions that: (i) under the law of the jurisdiction where the entity is organized, the necessary steps have been taken to cause the Guaranty, when executed and delivered on behalf of the entity, to become a valid and enforceable obligation of that entity, (ii) the Guaranty, when executed and delivered on behalf of the entity, will be, to the extent that the law of the entity's jurisdiction of organization is applicable to the enforcement of the entity's obligations thereunder, a valid and enforceable obligation of that entity, enforceable against it in accordance with its terms, subject to any enumerated customary exceptions under the law of such jurisdiction, and (iii) under law of the jurisdiction where the entity is organized, the choice of [Illinois][New York] law to govern the Guaranty is valid and enforceable against such entity.

In rendering its opinions within the Opinion, counsel may state that it is not rendering any opinion with respect to the laws of the state of [Illinois][New York], which govern the Guaranty.

The following text provides an illustration of how the requirements in paragraphs (a) through (c) (inclusive) above might be presented in an opinion of counsel:

[Description of transaction background/reason for delivering opinion]

We are familiar with the proceedings taken by [entity] in connection with the Guaranty and the transactions contemplated thereby. In connection with the opinions hereinafter expressed, we have reviewed originals, or copies of originals certified to our satisfaction, of (i) [describe the organizational or governing documents of the entity], (ii) a certificate of the [corporate secretary (or similar or comparable officer)] of [entity] that the person executing the Guaranty on behalf of [entity] has the authority to execute and deliver the Guaranty and that the governing board of [entity] has approved the execution and delivery of the Guaranty, (iii) a certificate of the [corporate secretary (or similar or comparable officer)] of [entity] that [entity] has been authorized by its governing board to enter into agreements of the same type as the Guaranty, (iv) the Guaranty, (v) the CMC Contract, and (vi) [describe any other relevant documents]. We have considered the governmental or regulatory approvals that may be applicable to the execution, delivery and performance of the Guaranty by [entity]. We have also examined such questions of law and have satisfied ourselves as to such matters of fact as we have considered relevant and necessary as a basis for the opinions hereinafter expressed.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications hereinafter stated, it is our opinion that:

1. Under the law of [jurisdiction of organization or formation], [entity] has taken all necessary action to cause the Guaranty, when executed and delivered on behalf of [entity], to become a valid and binding obligation of [entity]

2. The Guaranty, when executed and delivered on behalf of [entity], will be, to the extent that the law of [jurisdiction of organization or formation] is applicable to the enforcement of [entity's] obligations thereunder, the valid and binding obligation of [entity], enforceable against [entity] in accordance with its terms, except as such enforceability may be affected by [describe any exceptions].

3. The choice of the parties to the Guaranty to have the laws of the state of [Illinois][New York] govern the enforceability of the parties' obligations under the Guaranty is valid and enforceable against [entity] under the laws of [jurisdiction of organization or formation].

[Concluding paragraphs and signature]

EXHIBIT ~~C~~B

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 Carbon Mitigation Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "CMC Contract")) has occurred and is continuing with respect to Account Party under the CMC 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 Carbon Mitigation Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "CMC Contract")) has occurred and is continuing with respect to Account Party under the CMC 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]"; or

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 Carbon Mitigation Credit Agreement between Account Party and the Beneficiary of the Letter of Credit (as the same may be amended, the "CMC Contract"). No event of default has occurred and is continuing under the CMC 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]".

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 electronic means 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.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid by the Issuing Bank. Partial drawings and multiple presentations are permitted hereunder.

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 or electronic means. 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: _____. Presentation of documents to effect a draw by electronic means must be made to the following email address: _____, 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 as of the Date of Issuance of this Irrevocable Standby Letter of Credit our senior unsecured debt is rated "A-" or better by S&P Global Ratings ("S&P") if rated by S&P, "A3" or better from Moody's Investors Service ("Moody's") if rated by Moody's, and "A-" or better by Fitch Ratings ("Fitch") if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody's, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.

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.

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 Carbon Mitigation Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "CMC Contract")) has occurred and is continuing with respect to Account Party under the CMC 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 Carbon Mitigation Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "CMC Contract")) has occurred and is continuing with respect to Account Party under the CMC 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]"; or

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 Carbon Mitigation Credit Agreement between Account Party and the Beneficiary of the Letter of Credit (as the same may be amended, the "CMC Contract"). No event of default has occurred and is continuing under the CMC 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]".

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 electronic means 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.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid by the Issuing Bank. Partial drawings and multiple presentations are permitted hereunder.

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 or electronic means. 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: _____. Presentation of documents to effect a draw by electronic means must be made to the following email address: _____, 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 as of the Date of Issuance of this Irrevocable Standby Letter of Credit our senior unsecured debt is rated "A-" or better by S&P Global Ratings ("S&P") if rated by S&P, "A3" or better from Moody's Investors Service ("Moody's") if rated by Moody's, and "A-" or better by Fitch Ratings ("Fitch"), if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody's, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.

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 ~~C~~B

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

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

_____
(BANK)

_____
(Authorized Signature)

Yours very truly,

_____
Signature of Beneficiary

SIGNATURE AUTHENTICATED

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

_____
(BANK)

_____
(Authorized Signature)

_____
Signature of Transferee

Schedule 2 to Exhibit ~~C~~B

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:_____
"Transferring Bank"

_____
(Advising Bank's Reference Number, if applicable)

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

_____

_____

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	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 First Beneficiary)	_____ (Print Name of Bank)
_____ (Print Authorized Signer's Name and Title)	_____ (Address of Bank)
_____ (Authorized Signature)	_____ (City, State, Zip Code)
_____ (Print Second Authorized Signer's Name and Title, if required)	_____ (Print Name and Title of Authorized Signer)
_____ (Second Authorized Signature, if required)	_____ (Authorized Signature)
_____ (Telephone Number)	_____ (Telephone Number)
	_____ (Date)

Schedule 3 to Exhibit ~~C~~B

LETTER OF FULL TRANSFER

_____, 202__

[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 ~~D~~C

Master Renewable Energy Certificate Purchase and Sale Agreement

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"):

2.2 Payment Terms	☐(a) Payment on Delivery ☐(b) Monthly Invoicing ☐(c) Prepayment ☐(d) Semiannual Invoicing
4. Certain Credit Terms.	Applicable (complete Certain Credit Terms) Not Applicable
8. Governing Law:	State (or Commonwealth) of _____
9.7 Confidentiality	Applicable (If not checked, inapplicable)
9.8 Dispute Resolution Addenda (check all those selected)	Waiver of Jury Trial Non-Binding Mediation in_____. Binding Arbitration in . ☐ Baseball Arbitration
Other Changes	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	Party B Name
By:_____	By: _____
Name:_____	Name: _____
Title:_____	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: $

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: $

Article 5: Events of Default; Remedies

Cross Default for Party A:
Party A Cross Default Amount
Other Entity: [Guarantor]
Cross Default 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_X, SO_X, CO_2 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 be 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

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.

1. **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					

2. **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:_____.

3. **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:_____	Signed:_____
Name:_____	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.

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)

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

Or

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_2e or other greenhouse gas emissions
- ☐ Displaced NO_X emissions
- ☐ Displaced _____
- ☐ Displaced Hg emissions
- ☐ Displaced PM emissions
- ☐ Displaced SO_2 emissions
- ☐ Displaced or reduced land resource impacts
- ☐
- ☐
- ☐ _____

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

_____

◊◊ 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 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.

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:

_____
_____
_____
_____

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**

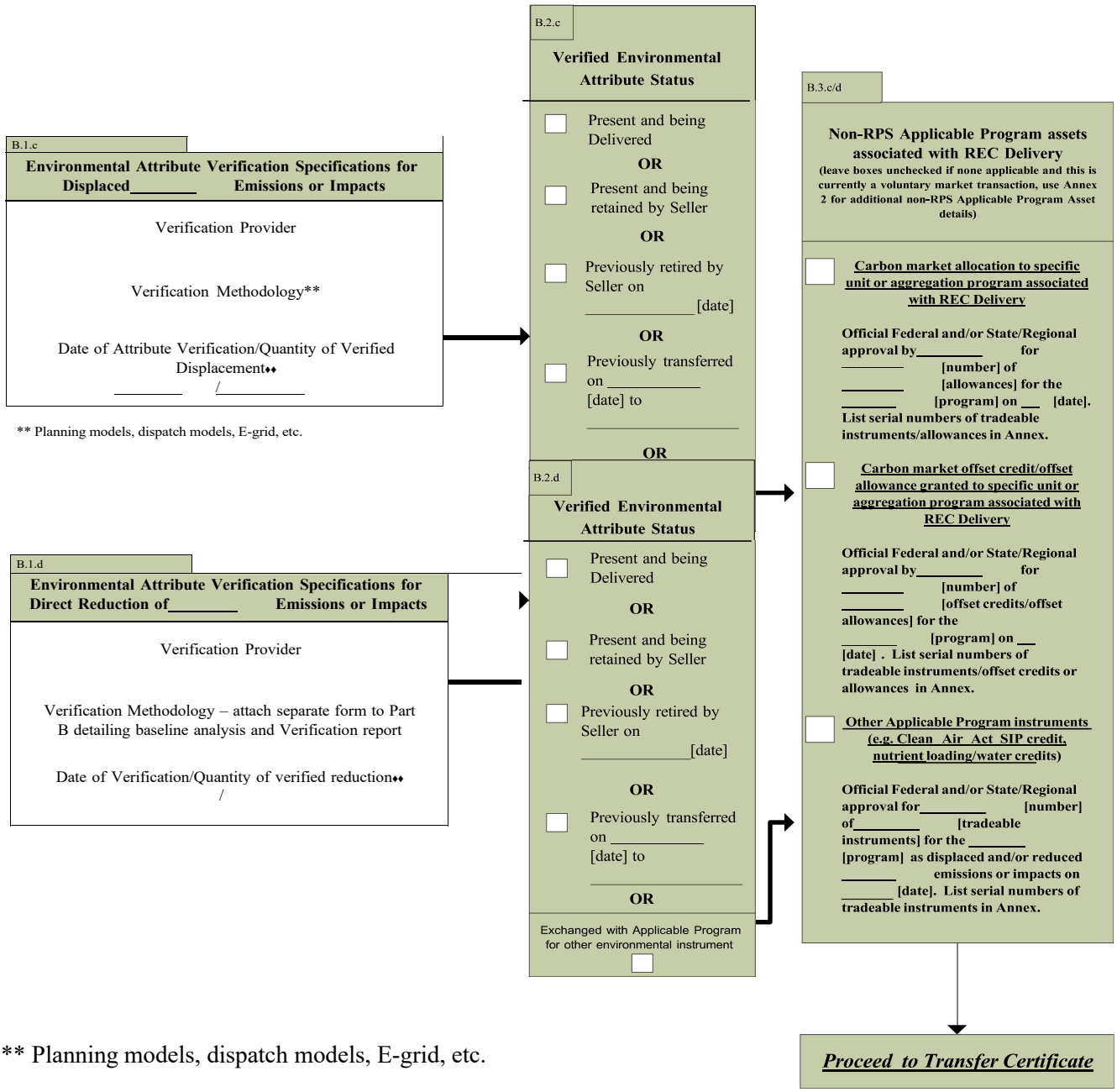
Official Federal and/or State/Regional approval by_____ for _____ [number] of _____ [offset credits/offset allowances] for the _____ [program] on ___ [date] . List serial numbers of tradeable instruments/offset credits or allowances in Annex.

☐ **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

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:

_____

_____

B.3.Extra
Non-RPS Applicable Program or environmental regulatory market additional details

_____

_____

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

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

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.

_____ Date _____
Name:_____ [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

EXAMPLE ATTESTATION

I, (print name and title) _____, declare that the (indicate with "x")[1] ____ 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_X, SO_2, and CO_2 emissions information is provided for all fossil-fueled generation, and NO_X emission information is also provided for biomass, landfill gas and digester gas generation as required.[2]

Generator Name	Generator ID Number	Fuel Type (if biomass, list fuel)	# MWhs TRCs / Power Sold	1st Date of Generator Operation (mm/yy)[3]	NOx Emissions (Lbs/MWh)	SO_2 Emissions (Lbs/MWh)	CO_2 Emissions (Lbs/MWh)	Period of Generation (Q#/yy or mm/yy)[4]
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

[1] Use separate forms to report electricity and TRC sales.

[2] Annual energy weighted average NO_X 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_X Emissions data is required for digester Gas generation resources located in New York, Minnesota, Georgia and North Carolina. Annual energy weighted average NO_X 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.

[3] For facilities that have added new renewable capacity, please indicate the amount and operational date of the new capacity and the existing capacity.

[4] List as separate line items MWh generated in each quarter.

GUIDANCE NOTES

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 (CO2), methane (CH4) 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 15th 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, 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.