

**M-RETS OPERATING SYSTEM****TERMS OF USE FOR QUALIFIED REPORTING ENTITIES  
LAST MODIFIED ON OCTOBER 25, 2007**

The following are the Terms of Use for any Qualified Reporting Entity (“QRE”), as defined in the M-RETS Interface Control Document for Qualified Reporting Entities, transmitting, uploading or otherwise entering data into the M-RETS Operating System (the “M-RETS System”) developed, owned and operated by APX, Inc. (“APX”).

**1. Acceptance of Terms.** Your use of the M-RETS System and the M-RETS website located online at [www.m-rets.com](http://www.m-rets.com) (“M-RETS Site”) is subject to the following Terms of Use, which constitute a binding contract between you, as the QRE hereunder, and APX (the QRE and APX are individually referred to herein as a “Party”, and collectively referred to herein as “the Parties”). BY USING OR ACCESSING THE M-RETS SYSTEM, YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF USE AS MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS HEREOF. You can review the current version of the Terms of Use at any time at [www.m-rets.com](http://www.m-rets.com). YOUR CONTINUED USE AND ACCESS OF THE M-RETS SYSTEM AFTER MODIFICATION OF THE TERMS OF USE SIGNIFIES YOUR AGREEMENT TO BE BOUND BY THE MODIFIED TERMS OF USE. In addition, when using the M-RETS System, you shall be subject to any guidelines and/or operating procedures, including but not limited to the M-RETS Operating Procedures and the M-RETS Interface Control Document, applicable to such use which may be posted at [www.m-rets.com](http://www.m-rets.com) from time to time, but only to the extent that such guidelines and operating procedures do not conflict with the M-RETS Operating Procedures, the M-RETS Interface Control Document or these Terms of Use. All such guidelines and operating procedures are incorporated by reference into these Terms of Use. If you do not agree to these Terms of Use, you may not access or otherwise use the M-RETS System.

**2. Description of Service.**

(a) The M-RETS System provides an electronic certificates-based tracking system that reports certain operating Attributes of Renewable electricity generators that (i) are located within the M-RETS Region; (ii) are owned by a utility located within the M-RETS Region; or (iii) have a contract with a utility located within the M-RETS Region to deliver electricity into the M-RETS Region. In addition, the M-RETS System tracks Renewable Resource Credits for the State of Wisconsin. The M-RETS System shall compile information regarding the Attributes. The Attributes are unbundled from each megawatt-hour (“MWh”) of Energy produced and recorded onto a Certificate. One Certificate shall be created for each MWh of Energy produced, and each Certificate shall be assigned a unique serial number. The data comprising the M-RETS System include (i) generation information from Control Area settlement data polled from a revenue quality meter or provided to the M-RETS Administrator by a QRE; and (ii) static information provided by an Account Holder such as fuel source and location.

(b) Subject to the terms of the M-RETS Services Contract, APX reserves the further right, in its sole discretion, to modify, augment, segment, reformat, reconfigure or

otherwise alter at any time the content or methods of transmission of the M-RETS System or these Terms of Use and create new types or versions of the M-RETS System or these Terms of Use. APX shall not be required to comply with any M-RETS Operating Procedure or the M-RETS Interface Control Document that APX determines in its reasonable discretion would have a material adverse effect on the M-RETS System; provided, however, that APX shall report to M-RETS any such non-compliance, along with an explanation of the reasons for such non-compliance, within 30 days after such non-compliance first occurs. APX shall provide the QRE with at least seven days' prior notice of material changes to the M-RETS System or these Terms of Use. Such changes, modifications, additions, or deletions shall be effective upon the date set forth in the notice, which may be given by any means including, without limitation, posting on the M-RETS Site, or by electronic or conventional mail. Any use of the M-RETS System by the QRE after the effective date set forth in the notice shall be deemed to constitute acceptance of such changes, modifications, additions, or deletions. Notwithstanding the foregoing, prior to implementing any material changes to the M-RETS System or these Terms of Use, APX shall give all users of the M-RETS System an opportunity to provide input to APX with respect to the proposed change(s), and APX shall give reasonable consideration to such input.

**3. Authorized User.** The rights granted herein are granted only to the QRE and only to the extent consistent with its role as QRE. The rights and obligations of these Terms of Use shall run to the named Parties and their successors in interest and authorized assigns. The QRE shall ensure that any of its employees and/or any other agents to whom it has provided access to the M-RETS System agree to be bound by the Terms of Use.

**4. Ownership and Use of Data and the M-RETS System.**

(a) The QRE acknowledges that APX is and shall remain owner of the M-RETS System, any components, modifications, adaptations and copies thereof. Without limiting any of the foregoing, the QRE further acknowledges and agrees that any and all software used in providing, accessing (other than commercially available third party internet browsers) or using the M-RETS System ("Software") is proprietary software of APX and/or its third-party suppliers. Except as provided herein, the QRE shall not obtain, have or retain any right, title or interest in or to the M-RETS System or the Software or any part thereof. The QRE acknowledges and agrees that APX is and shall remain the sole owner of any registration required to access or use the M-RETS System, including without limitation any and all intellectual property rights therein. The rights granted to the QRE are solely defined by these Terms of Use, the M-RETS Interface Control Document and the M-RETS Operating Procedures in effect from time to time and include, but are not limited to, permission to use the M-RETS System. The QRE's rights under these Terms of Use do not include a transfer of title or any other ownership interest in the M-RETS System, its content or any part thereof to the QRE. The QRE agrees not to contest or challenge APX's or its third-party suppliers' ownership of the M-RETS System and associated intellectual property rights and not to take any action that would infringe, misappropriate, constitute unfair competition with respect to, or otherwise violate APX's or its third-party suppliers' ownership of or rights in the M-RETS System.

(b) Except as otherwise provided in the M-RETS Operating Procedures, the QRE acknowledges that once the QRE transmits, uploads or otherwise enters data into the M-RETS System, such data cannot and shall not be deleted, removed, or otherwise expunged or

segregated, including in the event the QRE terminates its use of the M-RETS System, except in accordance with APX's normal operating procedures.

(c) The QRE acknowledges that the data transmitted by the M-RETS System is derived from proprietary and public third-party sources, including but not limited to data from Control Area operators and other QREs. The QRE shall not use the M-RETS System for any unlawful purpose or in an unlawful manner. The QRE shall prevent the use or copying of the M-RETS System and any other supporting materials by the QRE's employees and agents except as permitted by the terms of these Terms of Use.

(d) The QRE will not provide any information to APX that it has reason to believe is not true, is complete, and correct.

(e) **Access.** APX grants the QRE non-exclusive permission to transfer, upload or otherwise enter data into the M-RETS System subject to these Terms of Use, the M-RETS Interface Control Document and the Operating Procedures, which grant shall not be effective until the QRE has: (1) completed and submitted to APX the Consent of Qualified Reporting Entity attached hereto as Schedule A and (2) completed and submitted to APX the online registration available on the M-RETS Site, each for APX's review and prior approval. The QRE shall take all appropriate steps and precautions to safeguard and protect the access, use and security of the M-RETS System and the QRE's user access information from unauthorized users.

(f) **Prohibited Uses.** The QRE shall be subject to the following limitations:

(i) The QRE shall not loan, share, publish, republish, copy, reproduce, disclose, transmit, display, sell, license, lease or distribute any portion of the M-RETS System or any data thereon to any third-party, or use the M-RETS System as a basis for a directory or database prepared for commercial sale or distribution;

(ii) The QRE shall not remove any copyright, trademark, or other proprietary notices contained in the M-RETS System;

(iii) The QRE shall not disassemble, decode, decompile or otherwise reverse engineer any interfaces or software programs comprising the M-RETS System;

(iv) The QRE shall not access, download, transfer or manipulate data and databases comprising the M-RETS System using protocols or interfaces other than those provided by APX as part of the M-RETS System;

(v) The QRE shall not have access to or make any use of the source code for the M-RETS System; and

(vi) The QRE shall not infringe or misappropriate the M-RETS System or take any action inconsistent with APX's ownership of and rights in the M-RETS System.

(g) APX reserves all rights in the M-RETS System not expressly granted to the QRE in the Terms of Use.

- (h) In using the M-RETS Site, the QRE agrees:
- not to disrupt or interfere with the security of, or otherwise abuse, the M-RETS Site, or any services, system resources, accounts, servers, or networks connected to or accessible through the M-RETS Site or affiliated or linked sites;
  - not to disrupt or interfere with any other user's permitted enjoyment of the M-RETS Site or affiliated or linked websites in accordance with the Terms of Use, the M-RETS Interface Control Document and the M-RETS Operating Procedures;
  - not to upload, post, or otherwise transmit through or on the M-RETS Site any viruses or other harmful, disruptive, or destructive files;
  - not to use, frame, or utilize framing techniques to enclose any APX trademark, logo, or other proprietary information (including the images found at the M-RETS Site, the content of any text, or the layout/design of any page or form contained on a page) without APX's express written consent;
  - not to use meta tags or any other "hidden text" utilizing an APX name, trademark, or product name without APX's express written consent;
  - not to "deeplink" to the M-RETS Site without APX's express written consent;
  - not to create or use a false identity on the M-RETS Site;
  - not to collect or store personal data about others obtained through the M-RETS System;
  - not to attempt to obtain unauthorized access to the M-RETS Site or portions of the M-RETS Site that are restricted from general access;

In addition, the QRE agrees that it shall comply with all applicable local, state, national, and international laws and regulations, including but not limited to United States export restrictions, that relate to its use of or activities on the M-RETS Site.

## **5. Term and Termination.**

(a) **Term.** The Terms of Use become operative on the date on which the QRE indicates on the M-RETS Site that the QRE agrees with and accepts the Terms of Use and shall continue in effect until APX or the QRE terminates access to the M-RETS System pursuant to Section 5(b) hereof.

(b) **Termination by the QRE and/or APX.** APX may terminate access to, or the QRE may terminate use of, the M-RETS System, for any reason, by providing at least ten (10) business days written notice to the other Party.

(c) **Termination Required by Law.** APX shall terminate access to, or the QRE shall cease use of, the M-RETS System if required to do so by any statute, regulation or ordinance enacted by a governmental authority having jurisdiction over the QRE or APX, or by any order or other decision of a court of law or governmental agency, as required by said statute, regulation, ordinance, order or decision. At least sixty (60) days notice of said termination of access or cessation of use of the M-RETS System shall be given by the Party terminating the access to, or ceasing the use of, the M-RETS System under this subsection, unless a shorter notice period is required by the applicable statute, regulation, ordinance, order or decision.

(d) **Effect of Termination.** The terms of Sections 7 (Confidentiality), 9 (Limitation of Liability), 12 (Indemnification), and any other provisions meant to survive termination or expiration of these Terms of Use, shall survive termination of the Terms of Use.

**6. Intellectual Property.** The M-RETS System, and any and all content of the M-RETS System, are protected by copyright and other intellectual property laws and any unauthorized use of the information or the M-RETS System may violate such laws related to their protection. Except as expressly provided herein, APX does not grant any express or implied right or license of any kind to the QRE under any patents, copyrights, trademarks, or trade secret information with respect to the information and/or the M-RETS System. Except as expressly provided by copyright law or the Terms of Use, the QRE may not copy, distribute, modify, publish, sell, transfer, license, transmit, display, participate in the transfer or sale of, or create derivative works of, any of the information or the M-RETS System, either in whole or in part, other than (a) reports created for use by or dissemination to the QRE (including authorized employees and agents of the QRE) and to regulatory agencies under the M-RETS Operating Procedures, (b) as may be required or compelled by order of a court of competent jurisdiction or (c) as APX may agree in its sole discretion. The QRE acknowledges that the QRE does not acquire any ownership rights by downloading copyrighted material.

## **7. Confidentiality.**

(a) The M-RETS System, including the selection, arrangement and compilation of data, may be comprised of confidential, market sensitive and trade secret information of the QRE and other users of the M-RETS System. APX agrees to use and maintain information provided by the QRE in accordance with Section 5.2 of the M-RETS Operating Procedures. The QRE agrees not to use or disclose the information contained in the M-RETS System except as authorized by the Terms of Use. As used in these Terms of Use, "Confidential Information" means any information that has been designated in writing by any QRE or Subscriber to the M-RETS System to be confidential or proprietary; provided, however, that Confidential Information does not include information which the other Party can establish by written documentation (i) to have been publicly known prior to disclosure of such information by the disclosing Party to the other Party; (ii) to have become publicly known, without fault on the part of the other Party, subsequent to disclosure of such information by the disclosing Party to the other Party; (iii) to have been received by the other Party at any time from a source, other than the disclosing Party,

rightfully having possession of and the right to publicly disclose such information; (iv) to have been independently developed by employees or agents of the other Party without access to or use of such information disclosed by the disclosing Party to the other Party; (v) to be common technical information or know-how readily available in literature; (vi) to be required to be disclosed by force of law, including but not limited to information that must be provided to any governmental entity to confirm compliance with any statute or regulation, administrative proceeding, administrative or court order or discovery, provided that both Parties take such reasonable actions as necessary to ensure that such information is disclosed in as limited a manner possible; (vii) to be already within the knowledge of the recipient at the time of disclosure, which information is not subject to a confidentiality agreement; and (viii) to be information APX is otherwise permitted to disclose under the M-RETS Operating Procedures or the M-RETS Interface Control Document. The obligations of confidentiality in these Terms of Use shall survive its termination without limitation in duration for so long as information continues to meet the definition of Confidential Information.

(b) Confidential Information is the sole and exclusive property of the user who provided the information to the M-RETS System and shall not be used by the QRE for any purpose other than the purposes set forth in the M-RETS Operating Procedures and the M-RETS Interface Control Document.

(c) If the QRE obtains access to data in the M-RETS System that (i) is not data provided or owned by such QRE; (ii) is not part of a publicly available M-RETS System report; and (iii) the QRE is not otherwise authorized to use, then, regardless of whether such data is otherwise considered Confidential Information under these Terms of Use, the QRE shall:

- (i) immediately notify APX that QRE has obtained such access; and
- (ii) not disclose, disseminate, copy, or use any such data.

## **8. Limited Warranty; Disclaimer of Warranty.**

(a) The data contained in the M-RETS System (i) has been gathered by APX from sources believed by APX to be reliable, including but not limited to Control Area operators, Registered Generators and QREs. However, APX does not warrant that the information in the M-RETS System is correct, complete, current or accurate, and it does not warrant that the software programs in the M-RETS System shall be error free or bug free. Except as, and solely to the extent, specifically set forth in the M-RETS Operating Procedures, APX has no obligation to audit or otherwise verify any information contained in the M-RETS System.

(b) THE M-RETS SYSTEM IS PROVIDED "AS IS," "WHERE-IS" AND APX MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THESE TERMS OF USE OR THE ADEQUACY OR PERFORMANCE OF THE M-RETS SYSTEM, AND APX HEREBY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE

PRACTICE. THE QRE ACKNOWLEDGES THAT SERVICE DISRUPTIONS MAY OCCUR FROM TIME TO TIME.

(c) APX is not responsible for the acts or omissions of parties who input data into the M-RETS System or from whom data is obtained for inclusion into the M-RETS System.

(d) The QRE is solely responsible for the protection, security and management of usage and security of its computer network. APX shall not compensate the QRE for damages incurred due to security violations of the security of the QRE's computer network.

**9. Limitation of Liability.** THE QRE ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE M-RETS SYSTEM AND THE M-RETS SITE. APX SHALL HAVE NO LIABILITY TO THE QRE FOR THE M-RETS SYSTEM, SERVICE DISRUPTION, PERFORMANCE OR NONPERFORMANCE BY APX OR IN ANY WAY RELATED TO THESE TERMS OF USE, WHETHER CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL ACTIONS OF APX OR OTHERWISE, AND REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL APX BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES REGARDLESS OF CAUSE, NOR FOR ECONOMIC LOSS, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, PERSONAL INJURIES OR PROPERTY DAMAGES SUSTAINED BY THE QRE OR ANY THIRD PARTIES, EVEN IF APX HAS BEEN ADVISED BY THE QRE OR ANY THIRD PARTY OF SUCH DAMAGES. APX DISCLAIMS ANY LIABILITY FOR ERRORS, OMISSIONS OR OTHER INACCURACIES IN ANY PART OF THE M-RETS SYSTEM, OR THE REPORTS, CERTIFICATES OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO THE M-RETS SYSTEM. THE QRE HEREBY RELEASES AND PROTECTS APX, ANY WHOLLY OWNED SUBSIDIARIES OF APX, ANY OTHER CORPORATE AFFILIATES OF APX, THEIR SUCCESSORS AND ASSIGNS, AGENTS, CONTRACTORS, SERVICE PROVIDERS AND VENDORS FROM ANY AND ALL LIABILITY WITH RESPECT TO ANY DAMAGES OR INJURIES INCURRED BY THE QRE AS RELATES TO THE M-RETS SYSTEM.

**10. Passwords.** The QRE agrees to assume sole responsibility for the security of any passwords issued by APX to the QRE for accessing the M-RETS System. The QRE agrees to immediately notify APX of any suspected unauthorized use of the QRE's password(s) or account or any other suspected breach of security.

**11. Viruses.** APX assumes no responsibility, and shall not be liable for, any damages to, or viruses that may infect the QRE's equipment or other property on account of the QRE's access to or the use of the M-RETS System.

**12. Indemnification.** Except in the case of any state agency or governmental entity for which the indemnification of contracting Parties is not permitted by law, the QRE agrees to defend, indemnify and hold harmless APX and its affiliates and their respective directors, officers, employees and agents from and against any QRE violations of any statutes, regulations,

ordinances or laws of any local, state or federal public authority and against any and all claims (including third-party claims), causes of action, whether in contract, tort or any other legal theory (including strict liability), demands, damages, costs, liabilities, losses and expenses (including reasonable attorney's fees and court costs) of any nature whatsoever (hereinafter "Losses") arising out of, resulting from, attributable to or related to the QRE's use of the M-RETS System, or the QRE's violation of these Terms of Use, including, but not limited to any Losses arising out of or related to: (a) any inaccuracy, error, or delay in or omission of (i) any data, information, or service, or (ii) the transmission or delivery of any data, information, or service; (b) any interruption of any such data, information, or service (whether or not caused by APX); or (c) any financial, business, commercial or other judgment, decision, act or omission based upon or related to the information or the M-RETS System. For state agencies or other governmental entities that have agreed to the Terms of Use, indemnification or reimbursement of APX shall be to the maximum extent permitted pursuant to the law of the state which governs the agency or governmental entity. Notwithstanding the foregoing, the QRE shall not defend, indemnify or hold harmless APX or its directors, officers, employees and agents from and against any Losses to the extent that the Losses are caused by the conduct of APX which a court of law has determined amounted to gross negligence or willful misconduct. Similarly, the QRE shall not defend, indemnify or hold harmless APX's corporate affiliates or their respective directors, officers, employees and agents from and against any Losses to the extent that the Losses are caused by the conduct of the corporate affiliates of APX which a court of law has determined amounted to gross negligence or willful misconduct.

**13. No Assignment, Transfer or Encumbrance by the QRE.** Neither these Terms of Use nor any rights under these Terms of Use may be assigned, sublicensed, encumbered, pledged, mortgaged or otherwise transferred by the QRE, in whole or in part, whether voluntary or by operation of law without the express prior written consent of APX, which consent shall not be unreasonably withheld, conditioned or delayed.

**14. Relationship of Parties.** APX is an independent contractor under this Agreement. Neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement shall be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

**15. No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party shall have any rights under this Agreement whatsoever.

**16. Force Majeure.** Neither Party shall be deemed to have breached any provision of these Terms of Use as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, terrorism, energy crises, fires, floods, strikes or other labor disturbances, riots, embargoes, transportation contingencies, fuel shortages, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are beyond the claiming Party's reasonable control and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided.

**17. Severability.** If any part of these Terms of Use is held to be unenforceable or illegal by a court or governmental administrative agency, such holding shall not affect the validity of the other parts of the Terms of Use, which shall at all times remain in full force and effect.

**18. Waiver.** The waiver of a breach or the failure to require at any time performance of any provision of these Terms of Use shall not operate or be interpreted as a waiver of any other or subsequent breach nor in any way affect the ability of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of these Terms of Use shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**19. Notices.** All notices permitted or required under these Terms of Use shall be in writing and shall be delivered in person, by email, facsimile, or first class, registered or certified mail, postage prepaid, or by overnight courier service to the following addresses or such other address as either Party may specify in writing:

If to APX:

APX, Inc.  
224 Airport Parkway #600  
San Jose, CA 95110  
Attn: M-RETS Administrator  
Facsimile: 408.517.2985  
Email: mrets\_admin@apx.com

If to the QRE:

To the address provided at the time of registration

Service shall be effective on the earlier of actual receipt or the second business day after the day of mailing via first class mail. For service of notice via email or facsimile, it shall be deemed received on the day said notice was sent to the other Party.

**20. Governing Law and Dispute Resolution.** These Terms of Use shall be governed by the laws of the State of Wisconsin without regard to its rules on conflicts of laws and the Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to these Terms of Use.

(a) The Parties shall first attempt in good faith to settle any controversy or claim arising out of or relating to these Terms of Use, or the breach thereof, or any other claim or controversy between the Parties (any such claim, a “Dispute”), by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Procedures then in effect. At least thirty (30) days prior to initiating such mediation, the Party seeking to mediate (“Demanding Party”) shall give the other Party written notice describing the claim and the amount as to which it intends to initiate the action, as well as providing all supporting documentation available to the Demanding Party.

(b) Any Dispute that has not been resolved by mediation as provided herein within forty-five (45) days after initiation of the mediation procedure shall be finally resolved by arbitration administered by the AAA under its Commercial Arbitration Rules and Supplementary Procedures for Online Arbitration then in effect. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The Parties shall mutually choose one arbitrator experienced in intellectual property and/or database licensing agreements within thirty (30) days of instituting the arbitration; otherwise the AAA shall choose the arbitrator. Any hearings shall be held in Milwaukee, Wisconsin. Any request for emergency or injunctive relief may be submitted under the AAA's Optional Rules for Emergency Measures of Protection. The arbitrators shall have no authority to award punitive damages nor any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of these Terms of Use. Neither Party nor the arbitrators may disclose the existence or results of any arbitration hereunder without the prior written consent of both Parties.

(c) Each Party shall be responsible for the payment of all of its costs associated with the resolution of said dispute whether in arbitration or before a court of law, including but not limited to any filing fees, arbitrator fees, its reasonable attorneys fees and other costs incurred in such proceeding, provided that if a dispute is initiated in bad faith, as determined by the arbitrator, the Party initiating the dispute shall be responsible for all of the other Party's defense costs.

(d) The Parties agree that neither may bring a claim nor assert a cause of action against the other, in any forum or manner, more than one (1) year after the cause of action accrued, except where the Party could not have reasonably discovered the wrong giving rise to the claim within one (1) year.

**21. Capitalized Terms.** Any capitalized terms contained herein that are not otherwise defined herein shall have the meanings as such terms are defined in the M-RETS Operating Procedures.

**22. Entire Agreement.** These Terms of Use, including any and all exhibits attached hereto, is the entire agreement of the Parties and supersedes any preprinted or conflicting terms in any other prior or contemporaneous oral or written agreements and any and all other communication.

**23. Links.** APX makes no claim or representation regarding, and accepts no responsibility for, the quality, content, nature, or reliability of sites accessible by hyperlink from the M-RETS Site, or sites linking to the M-RETS Site. The linked sites are not under the control of APX and APX is not responsible for the content of any linked site or any link contained in a linked site, or any review, changes, or updates to such sites. The inclusion of any link does not imply affiliation, endorsement, or adoption by APX of the M-RETS Site or any information contained therein. When leaving the M-RETS Site, you should be aware that APX's Terms and policies no longer govern, and therefore you should review the applicable terms and policies, including privacy and data-gathering practices, of that site.

## 24. Definitions.

Capitalized terms used herein shall have the meanings ascribed to such terms in the M-RETS Operating Procedures or as follows:

- (a) **APX:** APX, Inc., the entity that developed, owns and operates the M-RETS System.
- (b) **APX Agreements:** The Terms of Use for the M-RETS System, the M-RETS Operating Procedures, the M-RETS Interface Control Document and such other agreements manuals, and practices of APX, as applicable.
- (c) **Attribute/Generation Attribute:** A non-Energy characteristic of a generator, such as location, vintage, fuel, state RPS program eligibility, etc.
- (d) **Energy:** The physical electricity commodity of the electrons transmitted through the power grid.
- (e) **M-RETS:** The Midwestern Renewable Energy Tracking System, an unincorporated organization consisting of representatives from stakeholders and regulators located in the M-RETS Region.
- (f) **M-RETS Administrator:** The M-RETS Administrator is the entity with the authority to administer or oversee the administration and implementation of the M-RETS Operating Procedures.
- (g) **M-RETS Interface Control Document:** The Midwestern Interface Control Document issued September [\_\_\_], 2007, as amended from time to time.
- (h) **M-RETS Operating Procedures:** The Midwestern Renewable Energy Tracking System Operating Procedures, dated December 6, 2006, as amended from time to time.
- (i) **M-RETS Region:** The region located within the state and provincial boundaries of those states and provinces that are included within M-RETS from time to time, as set forth in the M-RETS Operating Procedures.
- (j) **M-RETS Services Contract:** The Contract for Professional Services between APX and the State of Wisconsin/Public Service Commission, dated March 26, 2007, as amended from time to time.
- (k) **M-RETS System:** The software application program that (i) creates Certificates to uniquely define Attributes; and (ii) tracks said Certificates.
- (l) **Renewable:** Meeting the definition of “renewable” in any of the states or provinces comprising the M-RETS Region.

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**SCHEDULE A**  
**Consent of Qualified Reporting Entity**

1. I am the \_\_\_\_\_<sup>1</sup> of \_\_\_\_\_<sup>2</sup> (the “QRE”), a \_\_\_\_\_<sup>3</sup> with its principal offices located at \_\_\_\_\_<sup>4</sup> and a Party to the attached Terms of Use.

2. I acknowledge that I have read the Terms of Use and that I understand that APX may modify the Terms of Use from time to time pursuant to Section 1 of said Terms of Use.

3. I affirm that I have authority to execute this Consent on behalf of the QRE and that the QRE shall not be given access to the M-RETS System until this Consent has been signed by me and has been received by the M-RETS Administrator.

4. The QRE represents that it meets all of the requirements for participation in the M-RETS System, as set forth in the M-RETS Operating Procedures and the M-RETS Interface Control Document.

5. The QRE shall only use the M-RETS System to transmit, upload or otherwise enter generation data.

6. The QRE has no reason to believe that any data or other information being provided to APX and to the M-RETS System by the QRE and/or its agents and employees is not true and correct.

7. The QRE agrees to be bound by the M-RETS Operating Procedures, the M-RETS Interface Control Document, the Terms of Use and all other APX Agreements.

8. All notices or communication from APX to the QRE should be directed to the following:

[PROVIDE NAME, ADDRESS, PHONE NUMBER AND E-MAIL  
ADDRESS OF PRINCIPAL CONTACT FOR SUCH ISSUES]

9. I declare that all statements contained herein are true and correct, to the best of my knowledge, information and belief and are made with full knowledge that APX and all users of the M-RETS System that is the subject of these Terms of Use rely upon the truth of the statements contained in this consent.

\_\_\_\_\_  
Signature of Officers<sup>5</sup>

**Directions for Completing Consent of Qualified Reporting Entity**

**All information on this Consent of Qualified Reporting Entity must be typed or neatly printed in blue or black ink as follows:**

1. Fill in the Officer's title/position, i.e. President, Vice President, General Counsel.
2. Fill in the QRE's full legal name, i.e. ABC Domestic Energy Company, Inc.
3. Indicate whether the QRE is a corporation, LLC or partnership.
4. Insert the QRE's address.
5. Officer must sign the Consent on the second page.
6. Return the original, completed Consent to:  
**M-RETS Administrator**  
**APX, Inc.**  
**224 Airport Parkway #600**  
**San Jose, CA 95110**