

## **M-RETS OPERATING SYSTEM**

### **TERMS OF USE EFFECTIVE JANUARY 1, 2018**

The following are the Terms of Use for using the M-RETS Operating System and the M-RETS website located online at [www.mrets.org](http://www.mrets.org) (the “M-RETS System”). owned by the Midwest Renewable Energy Tracking System, Inc. (“M-RETS”). References to M-RETS under these Terms of Use include M-RETS, and its subcontractors. Capitalized terms used in these Terms of Use but not otherwise defined herein have the meanings ascribed to them under the M-RETS System Operating Procedures.

**1. Acceptance of Terms.** Your use of the M-RETS System is subject to these Terms of Use, which constitute a binding contract between you (also referred to herein as “User”) and M-RETS (User and M-RETS are individually referred to herein as a “Party”, and collectively referred to herein as “the Parties”). Users include Qualified Reporting Entities, Subscribers and their designated employees and agents. 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.mrets.org](http://www.mrets.org). 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. Use of the M-RETS System and website is intended for those who are of the age of majority and able to legally enter binding contracts without any right of rescission. You agree that you are of legal age and authority to enter into and be bound by the terms of the TOU. Similarly, to the extent you are providing any information regarding a third-party, you represent and warrant that you have the authority to provide such information from the third-party to M-RETS. 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, applicable to such use which may be posted at [www.mrets.org](http://www.mrets.org) from time to time. All such guidelines and operating procedures are incorporated by reference into these Terms of Use. Neither these Terms of Use nor the M-RETS Operating Procedures nor any other guidelines or procedures are intended to supersede any law, statute, or administrative code of any state or province to the extent such law, statute or code is applicable to the M-RETS System. If you do not agree to these Terms of Use, you may not access or otherwise use the M-RETS System and you must immediately cease and desist from any further use of the M-RETS System.

**2. Description of Service.**

(a) In consideration of the payment of the Fees specified herein, M-RETS hereby grants to User, a revocable, non-exclusive license to use the M-RETS System, subject to the terms and conditions contained herein.

(b) 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 will 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 will be assigned a unique serial number. The data comprising the M-RETS System include (i) generation information from control area settlement data pulled from a revenue quality meter or provided to the M-RETS Administrator by Control Area Operators, Qualified Independent Parties and Self-Reporting Generators as described in Section 8 of the M-RETS Operating Procedures; and (ii) static information provided by the User such as fuel source and location.

(c) Any issues that may arise regarding whether an ownership or security interest is created in the transferred Certificates or whether the transferred Certificate is considered a “forward contract” under the United States Bankruptcy Code, or any other issues related thereto, shall be addressed between the transferor and transferee of the Certificate. The M-RETS System will not address any such substantive issues and M-RETS shall not have any liability with respect to any such substantive issues.

(d) Subject to the terms of the M-RETS Services Contract, M-RETS reserves the right 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.

(e) M-RETS will provide User with 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 System, or by electronic or conventional mail. Any use of the M-RETS System by User after the effective date set forth in the notice shall be deemed to constitute acceptance of such changes, modifications, additions, or deletions.

### **3. Authorized User/Declaration of Agency.**

(a) M-RETS grants a Subscriber and its authorized User(s) non-exclusive permission to access, retrieve and download data from the M-RETS System subject to these Terms of Use and the Operating Procedures, which grant shall not be effective until Subscriber has: (1) completed and submitted to M-RETS the Consent of Subscriber using M-RETS System, (2) paid all applicable fees due under the Terms of Use, and (3) completed and submitted to M-RETS the online registration available on the M-RETS Site, all for M-RETS’s review and prior approval. User will take all appropriate steps and precautions to safeguard and protect the access, use and security of the M-RETS System and Subscriber and its User’s user access information from unauthorized users.

(b) The rights granted herein are granted only to an authorized User as designated by a Subscriber, Qualified Reporting Entity (“QRE”) or User. Each Subscriber, QREs and User 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, and represents and warrants that each User has all requisite authority to accept and be bound by these Terms of Use.

(c) If an M-RETS Subscriber wishes to grant a third party agent access to the M-RETS System on its behalf, the Subscriber must designate the level of access to the M-RETS System provided to its authorized Users on Declaration of Agency forms provided by M-RETS. The applicable form shall depend on the level of access Subscriber desires to grant to such Agent (Level 1, Level 2, Level 3, or Level 4). Subscriber understands and agrees that only one legal entity may be granted Level 1 access to an Account, and that accordingly if Subscriber grants Level 1 Account access to an Agent, Subscriber shall not have Level 1 access to that Account unless and until Subscriber revokes the applicable Declaration of Agency.

(d) Subscriber’s designated Agent is authorized to act for Subscriber with respect to all activities with regarding Subscriber’s Attribute data contained in the M-RETS System, including but not limited to creation of Certificates, transferring of Certificates, reviewing reports, making trades of Certificates, receiving bills from M-RETS and paying the Fees due to M-RETS (the “Authorized Rights and Responsibilities”). With respect to the Authorized Rights and Responsibilities, Agent is authorized to communicate and transact with M-RETS as Subscriber’s sole and exclusive agent, and M-RETS is authorized to communicate and transact directly and exclusively with Subscriber’s Agent. With respect to Authorized Rights and Responsibilities, Subscriber will abide by any direction issued by M-RETS to Subscriber’s Agent.

(e) Subscriber’s Agent agrees to be bound by the M-RETS Operating Procedures and Terms of Use, including but not limited to the limitations of liability and indemnification provisions contained therein.

(f) Principal is not released from and shall remain liable to M-RETS for compliance with all of the terms and conditions of the M-RETS Agreements, including without limitation indemnification of M-RETS, defaults of the M-RETS Terms of Use and Agreements committed by Subscriber’s Agent, and payment of all amounts due or to become due to M-RETS under the M-RETS Agreements or Terms of Use. Subscriber Agent’s authorization to make payment of any such amounts hereunder shall not release Subscriber from liability for any obligations to M-RETS not satisfied by Subscriber’s Agent, financial or otherwise.

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

(a) User acknowledges that M-RETS shall remain owner of the M-RETS System and any components, modifications, adaptations and copies thereof. Without limiting any of the foregoing, User 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 M-RETS and/or their third-party suppliers. Other than the license provided under these

Terms of Use, User 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. User acknowledges and agrees that M-RETS is and shall remain the sole owner of any User data input into the M-RETS System or used by User to gain to access or to use the M-RETS System, including without limitation any and all intellectual property rights therein. The rights granted to User are solely defined by these Terms of Use and the M-RETS Operating Procedures in effect from time to time and include, without limitation, permission to use the M-RETS System. User'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 User. User agrees not to contest or challenge M-RETS' ownership of the M-RETS System and associated intellectual property rights and not to take any action that would infringe, misappropriate, constitute unfair competition under applicable Federal or state law with respect to, or otherwise violate M-RETS' ownership of or rights in the M-RETS System.

(b) Except as otherwise provided in the M-RETS Operating Procedures, User acknowledges that once User transmits data to the M-RETS System, such data cannot and will not be deleted, removed, or otherwise expunged or segregated, including in the event a Subscriber terminates its subscription to use the M-RETS System, except in accordance with M-RETS normal operating procedures. M-RETS owns all such data input into the M-RETS System and User's sole rights to such data are as set forth in M-RETS operating procedures.

(c) User 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. User will not use the M-RETS System for any unlawful purpose or in an unlawful manner. User shall prevent the use or copying of the M-RETS System and any other supporting materials by User's employees and agents except as permitted by the terms of these Terms of Use.

(d) User represents and warrants to M-RETS that all information it provides to M-RETS or inputs into the M-RETS System shall be true, complete, and correct to the best of its knowledge, information and belief.

(e) **Prohibited Uses.** User shall be subject to the following limitations:

(i) User 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; provided, however, nothing shall prohibit internal business use or reporting to state agencies or User's end use customers;

(ii) User shall not use the M-RETS System in any manner that could damage, disable, overburden, or impair any servers, or the network(s) connected to any M-RETS System server, or interfere with any other party's use and enjoyment of the M-RETS System;

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

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

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

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

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

(viii) User shall not, and shall not allow third parties, to record data manually or using automated processes, including but not limited to screen scraping and/or data scraping.

(f) All rights in the M-RETS System not expressly granted to User in the Terms of Use are expressly reserved.

(g) M-RETS is not responsible for any material posted in any bulletin board, chat room or in any other forum on the M-RETS System (together the "Boards") or the accuracy of any information on any Certificate provided by any User or any third party. M-RETS is merely providing access to such material in the Boards as a service to User and the Boards shall be used only in a noncommercial manner. In using the Boards, User agrees not to upload, transmit, distribute or otherwise publish on the Boards any material that is, to the best of your reasonably obtained knowledge: libelous, defamatory, obscene, abusive, pornographic, threatening, inaccurate, or an invasion of privacy; an infringement of the intellectual property rights, including, but not limited to, copyrights and trademarks, of any person or entity; material that is illegal in any way or advocates illegal activity; an advertisement or solicitation of funds, goods, or services; a message posted by a user impersonating another; personal information such as messages which identify personal phone numbers, social security numbers, Account numbers, personal addresses, or employer references; or chain letters of any kind. User also agrees to indemnify M-RETS for any claims or suits arising from User's posting of such material on the Boards. M-RETS reserves the right to monitor and delete any postings deemed inconsistent with its policies or these Terms of Use. Although M-RETS will do its best to monitor materials in the Boards, in no event does it assume any particular obligation to do so or liability for failing to either monitor the Boards or remove specific material.

(h) In using the M-RETS Site, User 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 and 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 M-RETS 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 M-RETS’s express written consent;
- not to use meta tags or any other “hidden text” utilizing an M-RETS name, trademark, or product name without M-RETS’s express written consent;
- not to “deeplink” to the M-RETS Site without M-RETS’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;
- not to post any material that is false and/or defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person’s privacy, or otherwise in violation of any law; and
- not to post any copyrighted material unless the copyright is owned by User, which such posting shall be deemed consent by User of the publication of such copyrighted material on the M-RETS Site.

In addition, User agrees that it will 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. Fees.** User agrees to pay any and all fees associated with User’s use of the M-RETS System including without limitation, API Fees, Subscription Fees, Issuance Fees, Retirement Fees, and Transfer Fees, together referred to herein as the “Fees”, that M-RETS Inc. may charge for User’s use of the M-RETS System from time to time. M-RETS may, upon ninety (90) days’ notice to User increase or decrease any or all of the Fees at any time, provided that these Terms of Use are not intended to create any rights of User or any other party with respect to the M-RETS Services Contract. In no event shall any portion

of the Fees paid by User hereunder be prorated or refunded to User upon termination of the User's access to the M-RETS System.

**6. Payments and Taxes.** Invoices for Fees will be sent electronically to the User's designated e-mail address. Each User agrees to maintain a current e-mail address in their M-RETS account. Users shall pay any Fees charged hereunder by wire transfer or other payment form of immediately available funds to the account identified in the invoice from time to time no later than thirty (30) days from the date of the invoice-(the "Due Date"), without offset or reduction of any kind. The Fees shall be non-refundable. User will pay all sales, use, value added taxes, and other consumption taxes, personal property taxes and other taxes (other than those based on M-RETS's net income) related to the use of the M-RETS System unless User furnishes satisfactory proof of exemption. Taxes, if any, are not included in the Fees and will be added to User's invoices. If not so added, such taxes are the exclusive responsibility of User.

**7. Late Fees.** If Subscriber fails to pay when due any Fees or other amounts or charges which Subscriber is obligated to pay under the terms of the Terms of Use by the Due Date, then User shall be responsible to pay to M-RETS a late fee equal to five (5) percent of the amount then due as compensation for the administrative and legal costs and expenses incurred by M-RETS related to such failure. Acceptance of any late charge shall not constitute a waiver of User's default with respect to such late payment by, nor prevent M-RETS from exercising any other rights or remedies available to M-RETS under the Terms of Use or applicable law.

## **8. Term and Termination.**

(a) **Term.** The Terms of Use become operative on the date User the first has access to the M-RETS System and shall continue in effect until M-RETS or User terminates access to the M-RETS System.

### **(b) Termination by M-RETS.**

(i) M-RETS may terminate a Subscriber's or a User's access to the M-RETS System at any time with or without cause. In the event termination is other than for a material breach of the Terms of Use or Operating Procedures, M-RETS will generally provide at least thirty (30) days prior written notice of termination.

(c) **Termination by User.** User may terminate use of, the M-RETS System, for any reason, by providing at least thirty (30) days written notice to M-RETS. User's obligation to pay any and all Fees due hereunder at the time of termination of use or access shall survive any termination of use or access.

(d) **Termination Required by Law.** M-RETS shall terminate access to, or User 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 M-RETS, 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.

(e) **Effect of Termination.** Upon termination of a Subscriber's account, and upon written request from Subscriber, M-RETS will provide a Subscriber with a final Account-level transaction report in electronic form under Section 17.2.1 of the M-RETS Operating Procedures within fifteen (15) days after such termination. The terms of Sections 5 (Fees), 8 (Term and Termination), 9 (Default; Remedies), 11 (Confidentiality), 13 (Limitation of Liability), 16 (Indemnification), 17-26 and any other provisions meant to survive termination or expiration of these Terms of Use, shall survive termination of the Terms of Use.

(f) **Reinstatement.** M-RETS, in its sole discretion, may reinstate a User's access to the M-RETS System after termination by M-RETS for User's Default, upon M-RETS Inc.'s receipt of User's full payment of all Fees due prior to the termination. User agrees to pay M-RETS Inc. a reinstatement fee equal to the Fees which would have been due to M-RETS Inc. during the period in which the User's Account was terminated ("Reinstatement Fee"). The Reinstatement Fee shall be due prior to reinstatement of User's access to the M-RETS System

## **9. Default; Remedies.**

(a) **Default.** The occurrence of any of the following shall be considered a "Default":

(i) User fails to abide by the M-RETS Operating Procedures or fails to perform any of its material duties or obligations under these Terms of Use or other M-RETS Agreements, other than those set forth below in Sections 9(a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii) and (a)(viii)..

(ii) User fails to pay any of the Fees or other charges due hereunder in accordance with the procedures set forth in Section 6 above when due.

(iii) User, its employees, agents or contractors alter, tamper with, damage or destroy (1) the M-RETS System or any portion thereof, or (2) the data of other users of the M-RETS System.

(iv) User uses the M-RETS System in any manner that, directly or indirectly, violates any law, rule, code or regulation or aids any unlawful act or undertaking.

(v) All or substantially all of User's assets are attached or levied under execution (and User does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against User (and User fails to secure a stay or discharge thereof within sixty (60) days thereafter); User is insolvent and unable to pay its debts as they become due; User makes a general assignment for the benefit of creditors; User takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for User or its assets



if such receivership has not been vacated or set aside within thirty (30) days thereafter; or, dissolution or other failure to exist of User if User is an entity.

(vi) User falsifies or misrepresents any data or other information input into the M-RETS System by User in contravention of Section 4(d).

(vii) User makes any false or inaccurate representations in the Consent attached hereto.

(viii) User violates its confidentiality obligations set forth in Section 11.

(ix) In addition to the defaults described above, the Parties agree that if User receives written notice of a violation of the performance of any particular material term or condition of these Terms of Use such conduct shall represent a separate Default.

(b) **Remedies.** Upon the occurrence of any Default, M-RETS shall have the following rights and remedies, in addition to those stated elsewhere in these Terms of Use and those allowed by law or in equity, any one or more of which may be exercised without further notice to User:

(i) User acknowledges that money damages would not adequately compensate M-RETS in the event of a breach by User of its obligations hereunder and that injunctive relief may be essential for M-RETS to adequately protect itself hereunder. Accordingly, User agrees that, in addition to any other remedies available to M-RETS at law or in equity, including but not limited to any monetary damages, M-RETS shall be entitled to seek injunctive relief in the event User is in breach of any covenant or agreement contained herein.

(ii) Upon termination of the use of the M-RETS System, User shall be obligated to pay to M-RETS all monies due hereunder, which in the case of a termination as a result of a Default shall include attorneys' fees incurred to enforce M-RETS's rights under the Terms of Use, and which in any event shall include any interest and late fees due hereunder.

(c) **Non-waiver of Defaults.** The failure or delay of either Party in exercising any of its rights or remedies or other provisions of the Terms of Use shall not constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any Default shall be deemed to be a waiver of any other Default. M-RETS's receipt of less than the full amount of Fees due shall not be construed to be other than a payment on account then due, nor shall any statement on User's check or any letter accompanying User's check be deemed an accord and satisfaction.

**10. Intellectual Property.** The M-RETS System, and any and all content of the M-RETS System, are protected by copyright and/or other intellectual property and trade secret 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, M-RETS does not grant any express or implied right or license of any kind to User 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 the Terms of Use, User 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 User (including authorized employees and agents of User) 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 M-RETS may agree in their sole discretion. User acknowledges that User does not acquire any ownership rights by downloading copyrighted material.

## **11. Confidentiality.**

(a) “Confidential Information” includes (i) The M-RETS System, including the selection, arrangement and compilation of data (ii) confidential, market sensitive and trade secret information, and (iii) information provided to the M-RETS System by any User that has been designated in writing by any User to the M-RETS System to be confidential or proprietary.

(b) Confidential Information does not include information which User can establish by written documentation (i) to have been publicly known by User prior to disclosure of such information in the M-RETS System; (ii) to have been received by User at any time from a source, other than the M-RETS System, rightfully having possession of and the right to publicly disclose such information; (iv) to have been independently developed by employees or agents of User without access to or use of such information disclosed in the M-RETS System; (v) to be common technical information or know-how readily available in literature.

(c) If User is required to disclose 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, User must promptly notify M-RETS and take such reasonable actions as necessary to ensure that such information is disclosed in as limited a manner possible and subject to a qualified protective order to the extent available

(d) Confidential Information must be held strictly confidential and be used for operation of the M-RETS System and only released through the reporting process or based on an authorized consent for disclosure.

(e) User agrees not to use or disclose Confidential Information other than the information provided or owned by User contained in the M-RETS System. User agrees to protect the privacy and security of Confidential Information using its best efforts but not less than a reasonable degree of care. The User’s obligations of confidentiality shall survive termination of the Terms of Use and continue for so long as such Confidential Information retains its status as Confidential Information.

(f) If User obtains access to data in the M-RETS System that (i) is not data provided or owned by such User; (ii) is not part of a publicly available M-RETS System report; and (iii) User is not otherwise authorized to use, then, regardless of whether such

data is otherwise considered Confidential Information under these Terms of Use, User shall:

(i) immediately notify M-RETS that User has obtained such access;  
and

(ii) not disclose, disseminate, copy, or use any such information.

(g) User agrees to notify M-RETS within 48 hours of any security or privacy breach involving Confidential Information of which it becomes aware, and agrees to work with M-RETS to mitigate to the extent possible any damage to M-RETS or its Users resulting from such breach.

(h) M-RETS privacy policy is available at the M-RETS website.

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

(a) The data contained in the M-RETS System (i) has been gathered by M-RETS from sources believed by M-RETS to be reliable, including but not limited to control area operators and Registered Generators. However, M-RETS 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 will be error free or bug free or non-infringing. Except as, and solely to the extent, specifically set forth in the M-RETS Operating Procedures M-RETS 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 M-RETS INC. 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 M-RETS 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. USER ACKNOWLEDGES THAT SERVICE DISRUPTIONS MAY OCCUR FROM TIME TO TIME.

(c) M-RETS 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) User is solely responsible for the protection, security and management of usage and security of its computer network. M-RETS will not compensate User for damages incurred due to security violations of the security of User's computer network, nor shall User make deductions or set offs of any kind for Fees due to M-RETS resulting therefrom.

**13. Limitation of Liability.**

(a) USER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE M-RETS SYSTEM. M-RETS'S AND ITS CONTRACTORS' SOLE LIABILITY FOR THE M-RETS SYSTEM, SERVICE DISRUPTION, PERFORMANCE OR NONPERFORMANCE BY M-RETS OR IN ANY WAY RELATED TO THESE TERMS OF USE, WHETHER CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL ACTIONS OF M-RETS, AND REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE IS LIMITED TO THE SUM OF ONE HUNDRED DOLLARS (\$100). IN NO EVENT SHALL M-RETS OR ITS CONTACTORS BE LIABLE FOR ANY DAMAGES WHETHER DIRECT, 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 USER OR ANY THIRD PARTIES, EVEN IF M-RETS OR ITS CONTRACTOR HAS BEEN ADVISED BY USER OR ANY THIRD PARTY OF SUCH DAMAGES. M-RETS AND ITS CONTRACTORS DISCLAIM 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. USER HEREBY RELEASES AND PROTECTS M-RETS ANY OF ITS SUBSIDIARIES OR OTHER CORPORATE AFFILIATES; AND THE SUCCESSORS AND ASSIGNS, AGENTS, CONTRACTORS, SERVICE PROVIDERS AND VENDORS OF EACH OF THE FOREGOING FROM ANY AND ALL LIABILITY WITH RESPECT TO ANY DAMAGES OR INJURIES INCURRED BY USER AS RELATES TO THE M-RETS SYSTEM.

**14. Passwords and Login Information.** User agrees to assume sole responsibility for the security of User's user name, passwords, security questions and answers for accessing the M-RETS System. User agrees not to share User's access to the M-RETS System, user name, passwords, security questions and answers with any other person or user, or to do anything that might jeopardize the security of User's account. User agrees to immediately notify M-RETS of any suspected unauthorized use of User's user name, password(s) or Account or any other suspected breach of security.

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

**16. Indemnification.** Except in the case of any state agency or governmental entity for which the indemnification of contracting Parties is not permitted by law, User agrees to defend, indemnify and hold harmless M-RETS and its affiliates and their respective directors, officers, employees and agents from and against any User 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 User's use of the M-RETS System, or User'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 M-RETS); 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 M-RETS shall be to the maximum extent permitted pursuant to the law of the state which governs the agency or governmental entity. Notwithstanding the foregoing, User shall not defend, indemnify or hold harmless M-RETS or its affiliated entities, directors, officers, employees and agents from and against any Losses to the extent that the Losses are caused solely by the conduct of M-RETS or its affiliated entities, directors, officers, employees or agents which a court of law has determined amounted to gross negligence or willful misconduct.

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

**18. Relationship of Parties.** User and M-RETS are independent parties to these Terms of Use. Neither Party has the authority to execute documents that purport to bind the other, and nothing in these Terms of Use will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

**19. No Third Party Beneficiaries.** These Terms of Use are for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under these Terms of Use whatsoever.

**20. 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; provided, however, that no such occurrences shall excuse User's obligation to pay amounts due hereunder by the applicable Due Date.

**21. 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 will at all times remain in full force and effect.

**22. Waiver.** The waiver of a breach or the failure to require at any time performance of any provision of these Terms of Use will 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.

**23. Notices.** All notices permitted or required under these Terms of Use shall be in writing and shall be delivered in person, by email, 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 M-RETS:

Midwest Renewable Energy Tracking System, Inc.  
Attn: M-RETS Administrator  
60 S. 6<sup>th</sup> Street, Suite 2800  
Minneapolis, MN 55402

Email: [business@mrets.org](mailto:business@mrets.org)

If to User:

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.

**24. Governing Law; Venue; Attorney Fees.** These Terms of Use shall be governed by the laws of the State of Minnesota 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. Any action arising in connection with these Terms of Use will be brought in Hennepin County, Minnesota, M-RETS shall be entitled to recover its reasonable attorneys' fees, costs and other expenses incurred in enforcing the terms of these Terms of Use. 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.

**25. 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.

**26. Entire Agreement.** These Terms of Use (as amended from time to time), 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.

**27. Links.** M-RETS 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 M-RETS and M-RETS 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 M-RETS of the M-RETS Site or any information contained therein. When leaving the M-RETS Site, you should be aware that M-RETS'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.

**28. Authority to Act.** Agent is authorized to act for Subscriber with respect to all activities with regarding Subscriber's Attribute data contained in the M-RETS System, including but not limited to creation of Certificates, transferring of Certificates, reviewing reports, making trades of Certificates, receiving bills from M-RETS and paying the Fees due to M-RETS (the "Authorized Rights and Responsibilities"). With respect to the Authorized Rights and Responsibilities, Agent is authorized to communicate and transact with M-RETS as Subscriber's sole and exclusive agent, and M-RETS is authorized to communicate and transact directly and exclusively with Subscriber's Agent. With respect to Authorized Rights and Responsibilities, Subscriber will abide by any direction issued by M-RETS to Subscriber's Agent. Subscriber's Agent agrees to be bound by the M-RETS Operating Procedures and Terms of Use, including but not limited to the limitations of liability and indemnification provisions contained therein.

Principal is not released from and shall remain liable to M-RETS for compliance with all of the terms and conditions of the M-RETS Agreements, including without limitation indemnification of M-RETS, defaults of the M-RETS Terms of Use and Agreements committed by Subscriber's Agent, and payment of all amounts due or to become due to M-RETS under the M-RETS Agreements or Terms of Use. Subscriber Agent's authorization to make payment of any such amounts hereunder shall not release Subscriber from liability for any obligations to M-RETS not satisfied by Subscriber's Agent, financial or otherwise.

**29. Definitions.**

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

(a) **Account:** Any and all accounts maintained in the M-RETS System in accordance with the M-RETS Operating Procedures.

(b) **User Attribute/Generation Attribute:** A non-Energy characteristic of a generator, such as location, vintage, fuel, state RPS program eligibility, etc.

(c) **Energy:** The physical electricity commodity of the electrons transmitted through the power grid.

(d) **Generator Owner:** The person or entity holding legal title to a particular generating unit.

(e) **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.

(f) **M-RETS:** M-RETS, Inc., the Wisconsin non-profit corporation named Midwest Renewable Energy Tracking System, Inc.

(g) **M-RETS Operating Procedures:** The Midwestern Renewable Energy Tracking System Operating Procedures, dated December 6, 2006, as amended from time to time.

(h) **M-RETS Region:** The region located within the state and provincial boundaries of those states and provinces that are included within the M-RETS footprint from time to time, as set forth in the M-RETS Operating Procedures.

(i) **M-RETS System:** The software application program that (i) creates Certificates to uniquely define Attributes; and (ii) tracks said Certificates.

(j) **Regulator:** A person or agency executing and delivering to M-RETS a Consent of Non-Transacting State Regulator in the form of Schedule B-2 and thereafter using the M-RETS System with limited level 4 access to generate compliance or informational reports.

(k) **Renewable:** Meeting the definition of “renewable” in any of the states or provinces comprising the M-RETS footprint.

(l) **User Agent:** An agent of User who shall be designated either on a Schedule C-1 - Declaration of Agency, Level 1 Access, or on a Schedule C-2 – Declaration of Agency, Level 2, Level 3 or Level 4 Access.