



M-RETS OPERATING SYSTEM

TERMS OF USE LAST MODIFIED ON MAY 11, 2011

The following are the Terms of Use for using the M-RETS Operating System (the “M-RETS System”), developed and operated by APX, Inc., a NYSE Blue company (“APX”), and owned by APX and Midwest Renewable Energy Tracking System, Inc. (“M-RETS Inc.”).

1. Acceptance of Terms. Your use of the M-RETS System and the M-RETS website located online at www.m-rets.com (“M-RETS Site”) is subject to the following Terms of Use, which constitute a binding contract between you (also referred to herein as “Subscriber”) and APX (Subscriber 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. 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, applicable to such use which may be posted at www.m-rets.com from time to time, but only to the extent that such guidelines and operating procedures do not conflict with these Terms of Use. 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.

2. Description of Service.

(a) In consideration of the payment of the Fees specified herein, APX hereby grants to Subscriber, upon acceptance of these Terms of Use, a 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 polled 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 Subscriber 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 neither APX nor M-RETS Inc. shall have any liability with respect to any such substantive issues.

(d) Subject to the terms of the M-RETS Services Contract:

(i) APX 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.

(ii) APX shall not be required to comply with any M-RETS Operating Procedure that APX determines in its reasonable discretion would have a material adverse effect on the M-RETS System; provided, however, that APX will report to M-RETS Inc. 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 Subscriber 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 Subscriber 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 will give all users of the M-RETS System an opportunity to provide input to APX with respect to the proposed change(s), and APX will give reasonable consideration to such input.

3. Authorized User.

(a) The rights granted herein are granted only to Subscriber. The rights and obligations of these Terms of Use shall run to the named Parties and their successors in interest and authorized assigns. Subscriber shall ensure that any of its employees, Subscriber Agents

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.

(b) Subscriber shall execute and return to APX the applicable Declaration of Agency (“Declaration”) substantially in the form attached hereto as Schedule C-1 or Schedule C-2, as the case may be, for any third-party agent it desires to hire and/or contract with to access the M-RETS System on its behalf. 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 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.

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

(a) Subscriber acknowledges that M-RETS Inc. shall remain owner of the M-RETS System and any components, modifications, adaptations and copies thereof and that APX shall remain the owner of the base operating system thereof. Without limiting any of the foregoing, Subscriber 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 Inc., APX and/or their third-party suppliers. Except as provided herein, Subscriber 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. Subscriber acknowledges and agrees that M-RETS Inc. 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 Subscriber are solely defined by these Terms of Use 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. Subscriber’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 Subscriber. Subscriber agrees not to contest or challenge M-RETS Inc., APX’s or their 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 under applicable Federal or state law with respect to, or otherwise violate M-RETS Inc, APX’s or their third-party suppliers’ ownership of or rights in the M-RETS System.

(b) Except as otherwise provided in the M-RETS Operating Procedures, Subscriber acknowledges that once Subscriber 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 Subscriber terminates its subscription to use the M-RETS System, except in accordance with APX’s normal operating procedures and the M-RETS Services Contract.

(c) Subscriber 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. Subscriber will not use the M-RETS System for any unlawful purpose or in an unlawful manner. Subscriber shall prevent the use or copying of the M-RETS System and

any other supporting materials by Subscriber's employees and agents except as permitted by the terms of these Terms of Use.

(d) Subscriber represents that all information it provides to M-RETS Inc. and/or APX shall be true, is complete, and correct to the best of its knowledge, information and belief.

(e) **Access.** APX grants Subscriber 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 APX the Consent of Subscriber attached hereto as Schedule B-1, (2) completed and submitted to APX the M-RETS Subscriber Billing Information Form attached hereto as Schedule D, (3) paid all applicable fees due under the Terms of Use, and (4) completed and submitted to APX the online registration available on the M-RETS Site, all for APX's review and prior approval. Subscriber will take all appropriate steps and precautions to safeguard and protect the access, use and security of the M-RETS System and Subscriber's user access information from unauthorized users.

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

(i) Subscriber 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 Subscriber's end use customers;

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

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

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

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

(h) Neither M-RETS Inc. nor APX are not responsible for any material posted in any bulletin board, chat room or in any other forum on the M-RETS System or the M-RETS Site (together the "Boards") or the accuracy of any information on any Certificate provided by any Subscriber or any third party. APX is merely providing access to such material in the Boards as

a service to Subscriber and the Boards shall be used only in a noncommercial manner. In using the Boards, Subscriber 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. Subscriber also agrees to indemnify M-RETS Inc. and APX for any claims or suits arising from your posting of such material on the Boards. APX reserves the right to monitor and delete any postings deemed inconsistent with its policies or these Terms of Use. Although APX 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.

(i) In using the M-RETS Site, Subscriber 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 Inc. or 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 M-RETS Inc.'s or APX's express written consent;
- not to use meta tags or any other "hidden text" utilizing an M-RETS Inc. or APX name, trademark, or product name without M-RETS Inc.'s or APX's express written consent;
- not to "deeplink" to the M-RETS Site without M-RETS Inc.'s or 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;
- 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 Subscriber, which such posting shall be deemed consent by Subscriber of the publication of such copyrighted material on the M-RETS Site.

In addition, Subscriber 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. Subscriber agrees to pay the Subscription Fee, Issuance Fee and Retirement Fee, together referred to herein as the "Fees", that APX may charge for use of the M-RETS System from time to time. APX may, upon ninety (90) days' notice to Subscriber and subject to the terms of the M-RETS Services Contract, 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 Subscriber or any other party with respect to the M-RETS Services Contract. APX shall give Subscriber advance notice of any proposed Fee changes and will schedule a meeting for all Subscribers to discuss the change in Fees prior to effectuating the change in Fees. In no event shall any portion of the Fees paid to APX be prorated or refunded to Subscriber upon termination of the Terms of Use. The Fees to be charged to Subscriber can found in Appendix A of this document.

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

7. Late Fees. If Subscriber fails to pay when due any amounts or charges which Subscriber is obligated to pay under the terms of the Terms of Use by the Due Date, then Subscriber shall be responsible to pay to APX 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 APX related to such failure. Acceptance of any late charge shall not constitute a waiver of Subscriber's default with respect to such late payment by, nor prevent APX from exercising any other rights or remedies available to APX under the Terms of Use or applicable law.

8. Term and Termination.

(a) **Term.** The Terms of Use become operative on the date on which Subscriber indicates on the M-RETS Site that Subscriber agrees with and accepts the Terms of Use and shall continue in effect until APX or Subscriber terminates access to the M-RETS System pursuant to Section 8(b), (c) or (d) hereof.

(b) **Termination by APX.**

(i) APX may terminate Subscriber's access to the M-RETS System upon giving five (5) business days notice to Subscriber (except as set forth in Sections 8(b)(ii) and (b)(iii)) if Subscriber Defaults in the performance of any of its obligations under the Terms of Use as set forth in Section 9(a)(i) hereof.

(ii) APX may terminate Subscriber's access to the M-RETS System immediately in the event of any Default or breach of the Terms of Use as set forth in Sections 9(a)(ii), (a)(iii), (a)(v), (a)(vii), (a)(viii) and (a)(ix).

(iii) APX may terminate Subscriber's access to the M-RETS System immediately upon giving written notice to Subscriber of any Default or breach of the Terms of Use as set forth in Sections 9 (a)(iv) and (a)(vi).

(c) **Termination by Subscriber and/or APX.** APX may terminate access to, or Subscriber may terminate use of, the M-RETS System, for any reason, by providing at least sixty (60) days written notice to the other Party. Subscriber's obligation to pay any and all Fees due to APX at the time of termination of use or access shall survive such termination of use or access.

(d) **Termination Required by Law.** APX shall terminate access to, or Subscriber 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 Subscriber 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.

(e) **Effect of Termination.** Upon termination of these Terms of Use, APX will provide 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.**

(i) APX, in its sole discretion, may reinstate a Subscriber's access to the M-RETS System after termination by APX for Subscriber's Default, upon APX' receipt of Subscriber's full payment of all Fees due prior to the termination. Subscriber agrees to pay APX

a reinstatement fee equal to the Fees which would have been due to APX during the period in which the Subscriber's Account was terminated ("Reinstatement Fee"). The Reinstatement Fee shall be due prior to APX's reinstatement of Subscribers' access to the M-RETS System.

(ii) APX shall reinstate a Subscriber's access to the M-RETS System after termination by APX for Subscriber's Default if directed to do so as a result of the outcome of a dispute resolution proceeding under these Terms of Use. Whether payment of a Reinstatement Fee is required in such an instance shall be determined as part of such dispute resolution proceeding.

9. Default; Remedies.

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

(i) Subscriber 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 APX & 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), which default is not substantially cured within ten (10) business days after notice is given to Subscriber specifying such default.

(ii) Subscriber fails to pay any of the Fees or other charges due to APX in accordance with the procedures set forth in Section 6 above within ten (10) business days of their due date.

(iii) Subscriber, 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) Subscriber 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 Subscriber's assets are attached or levied under execution (and Subscriber 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 Subscriber (and Subscriber fails to secure a stay or discharge thereof within sixty (60) days thereafter); Subscriber is insolvent and unable to pay its debts as they become due; Subscriber makes a general assignment for the benefit of creditors; Subscriber takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Subscriber 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 Subscriber if Subscriber is an entity.

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

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

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

(ix) In addition to the defaults described above, the Parties agree that if Subscriber receives written notice of a violation of the performance of any particular material term or condition of these Terms of Use three (3) or more times during any twelve (12) month period, regardless of whether such violations are ultimately cured, then such conduct shall represent a separate Default.

(b) **Remedies.** Upon the occurrence of any Default, APX 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 Subscriber:

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

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

(c) **Nonwaiver 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. APX'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 Subscriber's check or any letter accompanying Subscriber'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 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, neither APX nor M-RETS Inc. grants any express or implied right or license of any kind to Subscriber 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, Subscriber 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 Subscriber (including authorized employees and agents of Subscriber) 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 and M-RETS Inc. may agree in their sole discretion. Subscriber acknowledges that Subscriber does not acquire any ownership rights by downloading copyrighted material.

11. 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 Subscriber and other users of the M-RETS System. APX agrees that, except where permission has been explicitly granted, all Account Holder information will be held strictly confidential and will only be released through the reporting process. Subscriber agrees not to use or disclose the information other than the information provided or owned by Subscriber 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 provided to the M-RETS System by any Subscriber and any information that has been designated in writing by any Subscriber to the M-RETS System to be confidential or proprietary; provided, however, that Confidential Information does not include information which the receiving Party can establish by written documentation (i) to have been publicly known prior to disclosure of such information by the disclosing Party to the receiving Party; (ii) to have become publicly known, without fault on the part of the receiving Party, subsequent to disclosure of such information by the disclosing Party to the receiving Party; (iii) to have been received by the receiving 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 receiving Party without access to or use of such information disclosed by the disclosing Party to the receiving 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 receiving Party 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 these Terms of Use. During the term of these Terms of Use and for five (5) years thereafter each Party shall maintain the Confidential Information as confidential with the same degree of care that it uses in maintaining its own confidential information, but in no event less than a reasonable degree of care, subject to the terms of these Terms of Use and the M-RETS Operating Procedures.

(b) Confidential Information is the sole and exclusive property of the Subscriber who provided the information to the M-RETS System and shall not be used by either Party for any purpose other than the purposes set forth in the M-RETS Operating Procedures and these Terms of Use.

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

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

APX shall notify the Subscriber providing such accessed information to APX of any such unauthorized access promptly after it receives notice from the accessing Subscriber.

12. 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 and Registered Generators. However, neither M-RETS Inc. nor APX warrants 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. Except as, and solely to the extent, specifically set forth in the M-RETS Operating Procedures, neither M-RETS Inc. nor APX has any 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 NEITHER M-RETS INC. NOR APX MAKES ANY 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 INC. AND APX HEREBY EACH 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. SUBSCRIBER ACKNOWLEDGES THAT SERVICE DISRUPTIONS MAY OCCUR FROM TIME TO TIME.

(c) Neither M-RETS Inc. nor APX is 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) Subscriber is solely responsible for the protection, security and management of usage and security of its computer network. Neither M-RETS Inc. nor APX will compensate Subscriber for damages incurred due to security violations of the security of Subscriber's computer network, nor shall Subscriber make deductions or set offs of any kind for Fees due to APX resulting therefrom.

13. Limitation of Liability.

(a) SUBSCRIBER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE M-RETS SYSTEM AND THE M-RETS SITE. M-RETS INC.'S AND APX'S SOLE LIABILITY 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 M-RETS, INC., APX OR OTHERWISE, AND REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, IS LIMITED TO AN AGGREGATE AMOUNT EQUAL TO THE GREATER OF (X) THE FEES PAID BY SUBSCRIBER TO APX DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE DATE ANY SUCH CLAIM IS OR CLAIMS ARE MADE BY SUBSCRIBER AND (Y) THE FEES PAID BY SUBSCRIBER TO APX DURING THE CALENDAR YEAR IN WHICH ANY SUCH CLAIM IS OR CLAIMS ARE MADE BY SUBSCRIBER. IN NO EVENT SHALL EITHER M-RETS INC. OR 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 SUBSCRIBER OR ANY THIRD PARTIES, EVEN IF M-RETS, INC. OR APX HAS BEEN ADVISED BY SUBSCRIBER OR ANY THIRD PARTY OF SUCH DAMAGES. M-RETS INC. AND APX EACH 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. SUBSCRIBER HEREBY RELEASES AND PROTECTS M-RETS INC.; APX AND 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 SUBSCRIBER AS RELATES TO THE M-RETS SYSTEM.

(b) Subscriber understands and acknowledges that it shall look solely to the insurance and assets of APX for the payment of any damages or costs and that if the insurance and assets of APX are insufficient to pay all or any part of those amounts, that Subscriber shall have no recourse against any director, officer, shareholder, any member of a shareholder, employee or agent for that purpose.

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

15. Viruses. Neither M-RETS Inc. nor APX assumes any responsibility, and neither shall be liable for, any damages to, or viruses that may infect Subscriber's equipment or other property on account of Subscriber'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, Subscriber agrees to defend, indemnify and hold harmless M-RETS Inc., APX and its affiliates and their respective directors, officers, employees and agents from and against any Subscriber 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 Subscriber's use of the M-RETS System, or Subscriber'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 M-RETS Inc. and/or 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, Subscriber 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, Subscriber 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.

17. No Assignment, Transfer or Encumbrance by Subscriber. Neither these Terms of Use nor any rights under these Terms of Use may be assigned, sublicensed, encumbered, pledged, mortgaged or otherwise transferred by Subscriber, 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.

18. 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 will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

19. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under this Agreement 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 Subscriber'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 APX:

APX, Inc.
224 Airport Parkway, Suite 600
San Jose, CA 95110
Attn: M-RETS Administrator
Email: mrets@nyseblue.com

If to Subscriber:

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 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 will 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 will 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.

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. 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.

28. 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) **APX:** APX, Inc., the entity that developed and operates the M-RETS System.

(c) **APX & M-RETS Agreements:** The Terms of Use for the M-RETS System, the M-RETS Operating Procedures and such other consents, agreements, manuals, and practices of APX to which Subscriber is a party or which pertain to Subscriber, as applicable.

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

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

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

(g) **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.

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

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

(j) **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.

(k) **M-RETS Services Contract:** The Contract for Professional Services between APX and the M-RETS Inc., dated February 11, 2011, as amended from time to time.

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

(m) **Regulator:** A person or agency executing and delivering to APX 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.

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

(o) **Subscriber Agent:** An agent of Subscriber 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.

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