

**SERVICE SCHEDULE R OPTIONAL FORM OF ANNEX 3
STATE OF CALIFORNIA PROVISIONS**

Explanation and Instructions:

The provisions of this Service Schedule R Optional Form of Annex 3 (“Annex 3”) may, upon the election of the Parties, be incorporated into REC Transactions under Service Schedule 3, where the REC Transactions are undertaken to comply with the Renewable Portfolio Standard (“RPS”) of the State of California. This Form has not been submitted to the Federal Energy Regulatory Commission or approved under the Federal Power Act. WSPP provides this Form for the convenience of its Members.

If the Parties elect to adopt this Annex 3, they shall do so by incorporating it into the Confirmation of the applicable REC Transaction. In the event of such adoption, any conflicts between provisions of Service Schedule R and this Annex 3 shall be resolved in favor of this Annex 3. This prioritization is reflected in the terms that follow.

Terms and Conditions:

STANDARD CONTRACT TERMS AND CONDITIONS THAT MAY NOT BE MODIFIED PER CPUC DECISION NOS. 08-04-009, 08-08-028, 10-03-021 AND 11-01-025 ARE SHOWN IN GREEN TEXT.

1. The commencement of Delivery shall be contingent upon all of the following conditions (the “Conditions”) having been satisfied:
 - (a) Purchaser shall have obtained CPUC Approval of, or waiver of such approval of, this Agreement; and
 - (b) Certification of the Project by the California Energy Commission (“CEC”) as an RPS-eligible resource.

Both Parties shall take all reasonable actions to satisfy the Conditions. Except in the case of a delay caused in part or in whole by Seller, failure by Purchaser to request CPUC Approval by the date specified in Section 6 of this Annex 3 shall constitute an Event of Default under Section 22.1(b) of the WSPP Agreement and the remedies applicable to Events of Default under Section 22.2 of the WSPP Agreement shall apply.

2. The definition of “REC” in Annex 1 to Service Schedule R is amended in its entirety to state the following:

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by law.
3. The following definitions shall apply to REC Transactions under this Annex 3:
 - 3.1 “Agreement” as used in this Annex 3 shall mean all of the terms applicable to a REC Transaction under the WSPP Agreement, Service Schedule R, this Annex 3, and Confirmation(s).
 - 3.2 “Buyer” means Purchaser.

- 3.3 “CPUC” means the California Public Utilities Commission or a successor regulatory agency having substantially similar jurisdiction.
- 3.4 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
 - (b) Finds that any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission Decision or by subsequent legislation, for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

- 3.5 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:
- (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
 - (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹
 - (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

3.6 The definition of "RPS" in Service Schedule R Annex 1 is deleted in its entirety and replaced with the following:

"RPS" means the California Renewables Portfolio Standard Program as codified at California Public Utilities Code Section 399.11 *et seq.*, and any decisions by the CPUC related thereto.

4. Further Assurances

- 4.1 Seller shall take all reasonable actions, including, but not limited to, amending the Confirmation, to ensure that the energy associated with the Green Attributes provided for hereunder qualifies as "delivered" energy into California within the meaning of the RPS; provided that such action does not result in a change in the original allocation of the economic benefits and burdens to Seller under the Confirmation.
- 4.2 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

- (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
- (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

4.3 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

“Commercially reasonable efforts” shall not require Seller to incur out-of-pocket expenses in excess of \$1,000,000.

5. Seller’s Conveyance of Green Attributes

- (a) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (b) For each month of the Delivery Term, Seller shall deliver and convey the Green Attributes pursuant to this Article 5 within five (5) Business Days after the end of the month in which the WREGIS Certificates for such Green Attributes are created by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of such Green Attributes, to Purchaser into Purchaser’s WREGIS account such that all right, title and interest in and to such WREGIS Certificates shall transfer from Seller to Purchaser.
- (c) RECs will be transferred to Purchaser through WREGIS and conform to the definition and attributes required for compliance with the RPS, as set forth in CPUC D.08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation.

6. CPUC Filing and Approval

Within ____ (__) days after the execution date of the Confirmation, Purchaser shall file with the CPUC the appropriate request for CPUC Approval. Purchaser shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. Seller shall use commercially reasonable efforts to support Purchaser in obtaining CPUC Approval. Purchaser has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

7. Governing Law; Resolution of Conflicts Among Documents

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

For the avoidance of doubt, as used in the immediately preceding paragraph the term “agreement” means this Agreement and the term “party” or “parties” means Party or Parties.

In the event of conflicts between provisions of Service Schedule R and this Annex 3, the provisions of Annex 3 shall control.

8. Registration and Tracking

RECs will be transferred to Purchaser through WREGIS and conform to the definition and attributes required for compliance with the RPS, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.