



## **NORTH AMERICAN RENEWABLES BIOMASS REGISTRY**

### **TERMS OF USE FOR BIOMASS REGISTRY**

*Last modified July 2018*

The following are the Terms of Use for the North American Renewables Biomass Certificate Registry (“Biomass Registry”), operated and administered by APX, Inc. (“Administrator”). These Terms of Use are in addition to the General Terms of Use (the “General Terms of Use”) applicable to your use of the Biomass Registry Site (as defined below). In the event these Terms of Use conflict or are inconsistent with the General Terms of Use, the provisions of these Terms of Use shall control for the services referenced herein.

#### **1. CAPITALIZED TERMS; DEFINITIONS.**

Any capitalized terms contained herein that are not otherwise defined herein shall have the meanings as such terms are defined in the Operative Documents (as defined below).

“Bank” means any of the following:

- (i) any banking institution chartered by the Office of the Comptroller of the Currency;
- (ii) any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; or
- (iii) any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or federal authority having supervision over any such institution.

“Beneficial Ownership Rights,” with respect to any Certificate (as defined below), means any contractual or other right to direct or control the sale or other disposition of, or the retirement of, such Certificate.

“Regulated Person” means any of the following:

- (i) Any Bank;
- (ii) Any broker or dealer that (A) is registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended; and (B) is a member of all requisite self-regulatory organizations;

- (iii) Any member of the National Futures Association that is registered under the Commodity Exchange Act, as amended, as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or floor broker;
- (iv) (A) any investment company registered under the Investment Company Act of 1940, as amended; (B) any investment adviser registered under the Investment Advisers Act of 1940, as amended; or (C) any fund that has assets under management with an aggregate market value of no less than \$100 million and that is advised or managed by an investment adviser registered under the Investment Advisers Act of 1940, as amended;
- (v) Any “business development company” as defined in (A) Section 2(a)(13) of the Investment Company Act of 1940, as amended, or (B) Section 202(a)(22) of the Investment Advisers Act of 1940, as amended;
- (vi) (A) any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees; (B) any employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974, as amended; or (C) any trust fund whose trustee is a Bank and whose participants are exclusively plans of the types identified in the above clause (A) or (B), except trust funds that include as participants individual retirement accounts or H.R. 10 plans; or
- (vii) any seller that has been granted authorization to engage in sales for resale of electric energy, capacity or ancillary services from the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act, as amended, and the requirements of 18 C.F.R. § 35.

## **2. ACCEPTANCE OF TERMS.**

The use by you and your Users (as defined below) of the Biomass Registry and the Biomass Registry website located online at <http://narecs.com> (or such other website as Administrator may notify you is the location of the Biomass Registry) (the “Biomass Registry Site”) is subject to the following Terms of Use, which constitute a binding contract between you (“Account Holder”) and your Users as users of the Biomass Registry and Administrator as administrator and owner of the Biomass Registry (Account Holder and Administrator, are individually referred to herein as a “Party”, and collectively referred to herein as “the Parties”). BY USING OR ACCESSING THE BIOMASS REGISTRY, YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF USE AS MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS HEREOF, AND YOU AGREE TO TAKE AFFIRMATIVE RESPONSIBILITY FOR THE COMPLIANCE OF YOUR USERS WITH THESE TERMS OF USE. You can review the current version of the Terms of Use at any time at

the Biomass Registry Site. CONTINUED USE AND ACCESS OF THE BIOMASS REGISTRY BY YOU AND/OR YOUR USERS AFTER MODIFICATION OF THE TERMS OF USE SIGNIFIES YOUR AGREEMENT TO BE BOUND BY THE MODIFIED TERMS OF USE, AND YOUR AGREEMENT TO TAKE AFFIRMATIVE RESPONSIBILITY FOR THE COMPLIANCE OF YOUR USERS WITH THESE MODIFIED TERMS OF USE. In addition, when using the Biomass Registry, you shall be subject to any rules, guidelines and/or operating procedures, including but not limited to the NAR Biomass Registry Operating Procedures (the “Biomass Operating Procedures”), the General Terms of Use and such other rules, guidelines and/or operating procedures, each as modified or restated from time to time (collectively with the Operating Procedures, the “Operative Documents”) applicable to such use which may be posted at the Biomass Registry Site from time to time. All such rules, guidelines and operating procedures are incorporated by reference into these Terms of Use. If you do not agree to these Terms of Use, you and your Users may not access or otherwise use the Biomass Registry.

### **3. DESCRIPTION OF SERVICE.**

(a) The Biomass Registry provides an electronic tracking system to create, transfer, track, manage, and retire Biomass Fuel Certificates (“BFCs” or “Certificates”). If its registration is accepted by Administrator, Account Holder will have an Account in the Biomass Registry in which it can hold Certificates. Certificates will represent the specific Attributes associated with one ton of biomass and recorded onto a Certificate with a unique serial number. As further described in the Operating Procedures, the data comprising the Biomass Registry include, but are not limited to:

- (i) biomass information from Biomass Tonnage Reports (“BTR”) uploaded by Biomass Registry Participants; and
- (ii) static information provided by Account Holder, its related Users or other participants in the Biomass Registry and their related Users (collectively, the “Biomass Registry Participants”) such as biomass source and location.

(b) The Biomass Registry is an assembly of data regarding biomass sources (“Harvest Sites”) and their attributes serve only for informational purposes. Any issues or disputes that may arise between the Account Holder, other Biomass Registry Participants and third parties from the use of the Biomass Registry or the data contained therein (including without limitation in connection with the validity of Harvest Site, with the purchase and sale of Certificates or whether an ownership interest, Beneficial Ownership Rights, security interest or other proprietary interest is created in any Certificate) shall be addressed between the Account Holder and such Biomass Registry Participant or third party. Neither the Biomass Registry nor Administrator will address any such issues and neither shall have any liability with respect to any such issues. Administrator reserves the right to dispose of any disputed Certificate by interpleader or other suitable action in

the event of controversy and to deposit any Certificates or other items subject of the interpleader action with the relevant court or arbitral panel.

(c) Administrator reserves the further right, in its sole discretion, to modify, augment, segment, reformat, reconfigure or otherwise alter at any time the content or methods of transmission of the Biomass Registry, the Operative Documents or these Terms of Use and create new types or versions of the Biomass Registry, the Operative Documents or these Terms of Use. Administrator shall not be required to comply with any provision of any Operative Document to the extent that Administrator determines in its reasonable discretion that such compliance would have a material adverse effect on the Biomass Registry; provided that Administrator shall report any such non-compliance to Account Holders within thirty (30) days after such non-compliance first occurs. Administrator shall provide Account Holder with at least seven (7) days' prior notice of material changes to the Biomass Registry or these Terms of Use, and such changes shall be effective upon the date set forth in the notice, which may be given by any means including, without limitation, posting on the Biomass Registry Site, or by electronic or conventional mail. All other changes shall be effective upon their being posted on the Biomass Registry Site. Any use of the Biomass Registry by Account Holder after a change has gone into effect shall be deemed to constitute acceptance of such change.

#### **4. AUTHORIZED USER**

(a) The rights and obligations of these Terms of Use shall run to the named Parties and their successors in interest and authorized assigns. Account Holder shall ensure that any of its owners, trustees, partners, members, officers, directors, employees, agents appointed as Account Holder's agent ("Agents") and/or any other agents to whom it has provided access to the Biomass Registry (collectively, the "Representatives" or "Users") agree to comply with the Operative Documents and these Terms of Use.

(b) Account Holder shall execute and return to Administrator a Declaration of Agency ("Declaration") for any third-party agent it desires to hire and/or contract with to access the Biomass Registry on its behalf. A form of Declaration will be available on the Biomass Registry Site. Account Holder understands and agrees that only one entity may be granted access to an Account, and that accordingly if Account Holder grants Account access to an Agent, Account Holder shall not have access to that Account unless and until Account Holder revokes the applicable Declaration of Agency.

(c) Account Holder acknowledges and agrees that the rights and licenses provided under these Terms of Use and the Operative Documents are solely for the benefit of Account Holder and are to be exercised only in connection with Account Holder's and its Representatives', if any, use of the Biomass Registry. Without limiting the generality of the foregoing, except as set forth in this Section 4 and in Section 17, or except with respect to a Group Retirement Sub-account as described in the Operating Procedure, Account Holder may not transfer or sublicense its rights, licenses or Account, or any portion thereof, to any third party.

## **5. OWNERSHIP AND USE OF DATA AND THE BIOMASS REGISTRY.**

(a) Account Holder acknowledges that (i) Confidential Information, as defined in Section 12(b) hereof, is, and shall remain, the exclusive property of the Biomass Registry Participant who submitted it or on whose behalf it was submitted, and (ii) Administrator is and shall remain the sole owner of all data comprising the Biomass Registry (except as provided in Section 12(d) hereof) and of the Biomass Registry operating system, including any components, modifications, adaptations and copies thereof. Without limiting any of the foregoing, Account Holder further acknowledges and agrees that any and all software used in providing, accessing (other than commercially available third party internet browsers) or using the Biomass Registry (“Software”) is proprietary software of Administrator. Except as provided herein, Account Holder shall not obtain, have or retain any right, title or interest in or to the Biomass Registry or the Software or any part thereof. Account Holder acknowledges and agrees that Administrator is, and shall remain, the sole owner of any registration data required to access or use the Biomass Registry, including without limitation any and all intellectual property rights therein. The rights granted to Account Holder are solely defined by these Terms of Use and the Operative Documents as in effect from time to time and include, but are not limited to, permission to use the Biomass Registry as set forth herein and therein. Account Holder’s rights under these Terms of Use do not include a transfer of title or any other ownership interest in the Biomass Registry, its content or any part thereof to Account Holder. Account Holder agrees not to contest or challenge Administrator’s ownership of the data comprising the Biomass Registry, the Biomass Registry, or the Software and associated intellectual property rights and not to take any action that would infringe, misappropriate, constitute unfair competition with respect to, or otherwise violate Administrator’s rights in the data comprising the Biomass Registry, the Biomass Registry, or the Software or associated intellectual property rights.

(b) Except as otherwise provided in the Operating Procedures and Section 12(d) hereof, Account Holder acknowledges that once Account Holder transmits data to the Biomass Registry, such data becomes the property of Administrator. Except in accordance with Administrator’s normal operating procedures, data in the Biomass Registry, including Confidential Information, cannot and will not be deleted, removed, or otherwise expunged or segregated, including in the event Account Holder terminates its use of the Biomass Registry or any Account or Sub-account in the Biomass Registry or is terminated pursuant to Section 8 hereof. To the extent any data submitted by or on behalf of Account Holder is and remains Confidential Information, Account Holder grants Administrator a perpetual, irrevocable, worldwide, royalty-free and non-exclusive license to retain and use such data in the Biomass Registry, subject to the obligations set forth in these Terms of Use applicable to such Confidential Information.

(c) Account Holder acknowledges that the data transmitted by the Biomass Registry is derived from proprietary and public third-party sources, including but not limited to data from other Biomass Registry Participants, Control Area Operators and Qualified

Reporting Entities. Account Holder will not use the Biomass Registry for any unlawful purpose or in an unlawful manner. Account Holder shall prevent the use or copying of the Biomass Registry and any other supporting materials by Account Holder's Representatives except as permitted by these Terms of Use.

(d) Administrator grants Account Holder non-exclusive permission to access, retrieve and download data from the Biomass Registry subject to these Terms of Use and the Operative Documents, which grant shall not be effective until (i) Account Holder has: (1) accepted these Terms of Use on the Biomass Registry Site, and (2) completed and submitted to Administrator the online registration available on the Biomass Registry Site, and (ii) Administrator, in its sole discretion, has accepted Account Holder's registration. Account Holder will take all appropriate steps and precautions to safeguard and protect the access, use and security of the Biomass Registry and Account Holder's user access information from unauthorized users.

(e) Administrator reserves all rights in the Biomass Registry not expressly granted to Account Holder in these Terms of Use.

(f) To Administrator's actual knowledge, the Software does not infringe any intellectual property rights of third parties.

## **6. OWNERSHIP OF CERTIFICATES; ACTION WITH RESPECT TO CERTIFICATES ON BEHALF OF THIRD PARTIES.**

(a) General Prohibition on 3<sup>rd</sup> Party Ownership. Except as otherwise permitted under Sections 6(b) or 6(c) below:

(i) Account Holder will only hold or retire in its Accounts, import to its Account, or export from its Account, Certificates for which it is the sole holder of all legal title and all Beneficial Ownership Rights, and

(ii) Account Holder may not hold any Accounts, or hold or retire in its Accounts, import to its Account, or export from its Account, any Certificates on behalf of one or more third parties.

(b) Retail Aggregator Exception. Account Holder may retire Certificates on behalf of one or more third parties, provided that:

(i) any such retirement may be effected only in a Group Retirement Sub-account, in the manner set forth in the Operating Procedures;

(ii) all legal title to and all Beneficial Ownership Rights in any Certificate retired in a Group Retirement Sub-account must be held by one or more individuals or organizations (collectively, a "Certificate Owner") that have authorized Account Holder in writing to retire such Certificate on their behalf and

- to provide any data or other information relating to such Certificate to Administrator (except to the extent that Account Holder may be deemed to hold or share with the applicable Certificate Owner any legal title to or Beneficial Ownership Rights in such Certificate); and
- (iii) any retirement of any Certificate in a Group Retirement Sub-account shall be effected solely on behalf of the applicable Certificate Owner.
- (c) **Optional Omnibus Account.** Account Holder may hold Certificates in its Account(s) on behalf of one or more third parties, provided that:
- (i) Account Holder is a Regulated Person and has provided Administrator a signed Regulated Person Attestation, available at the Biomass Registry Site; provided, however, that Administrator may, in its sole discretion, waive the requirements set forth in this paragraph (i) with respect to Account Holder by providing Account Holder with written notice of such waiver;
  - (ii) All legal title to and all Beneficial Ownership Rights in any Certificate so held by Account Holder is held by one or more Certificate Owners that have authorized Account Holder in writing to hold Certificates on their behalf and to provide any data or other information relating to such Certificate to Administrator (except to the extent that Account Holder may be deemed to hold or share with the applicable Certificate Owner any legal title to or Beneficial Ownership Rights in such Certificate);
  - (iii) Account Holder complies with all applicable laws, regulations or other legally enforceable requirements, including without limitation applicable provisions of the USA PATRIOT Act and the regulations of the Office of Foreign Assets Control of the U.S. Department of the Treasury;
  - (iv) Account Holder maintains a customer identification program that contains reasonable procedures to verify the identity of any individual or organization on whose behalf Account Holder is holding Certificates and maintains records of the information used to verify such identity, which records will be made available to Administrator upon request; and
  - (v) Account Holder complies with the requirements of Section 6(b) in connection with any retirement of Certificates it holds on behalf of one or more third parties.
- (d) Account Holder acknowledges that neither the Biomass Registry nor Administrator shall have any liability in connection with any misrepresentation by Account Holder or another Biomass Registry Participant relating to the ownership of any Certificate in any Account or sub-account held by Account Holder (including without

limitation the identity of the person(s) holding any legal title thereto or Beneficial Ownership Rights therein).

## **7. TAXES.**

Account Holder will pay all sales, use, value added taxes, and other consumption taxes, personal property taxes and other taxes and charges, if any, imposed by any governmental entity (other than those based on Administrator's net income) (collectively, "Taxes") related to the use of the Biomass Registry unless Account Holder furnishes satisfactory proof of exemption. Taxes, if any, are the exclusive responsibility of Account Holder.

## **8. TERM AND TERMINATION.**

(a) Term. These Terms of Use become operative on the date on which Account Holder indicates on the Biomass Registry Site that Account Holder agrees with and accepts the Terms of Use and shall continue in effect until Administrator or Account Holder terminates access to the Biomass Registry pursuant to Section 8(b), (c) or (d) hereof.

(b) Termination by Administrator.

(i) Prior to accepting your registration to become an Account Holder, Administrator may in its sole discretion reject your registration and terminate your access to the Biomass Registry immediately.

(ii) Administrator may terminate Account Holder's access to the Biomass Registry upon giving five (5) days notice to Account Holder if Account Holder is in Default pursuant to Section 9(a)(i) hereof.

(ii) Administrator may terminate Account Holder's access to the Biomass Registry immediately in the event of any Default pursuant to Sections 9(a)(ii) through (a)(ix) hereof.

(iv) Administrator may terminate Account Holder's access to the Biomass Registry, for any reason, by providing at least sixty (60) days written notice to Account Holder. Account Holder's obligation to pay any and all Taxes or other charges due under the Operative Documents and these Terms of Use at the time of termination of use shall survive such termination of use.

(c) Termination by Account Holder. Account Holder may terminate use of the Bio

mass Registry, for any reason, by providing at least sixty (60) days written notice to Administrator. Account Holder's obligation to pay any and all Taxes or other charges due under the Operative Documents and these Terms of Use at the time of termination of use shall survive such termination of use.

(d) Termination Required by Law. Administrator shall terminate access to, or Account Holder shall cease use of, the Biomass Registry if required to do so by any Applicable Law, or by any order or other decision of a court of law, arbitral panel or governmental agency. At least sixty (60) days notice of said termination of access or cessation of use of the Biomass Registry shall be given by the Party terminating the access to, or ceasing the use of, the Biomass Registry under this subsection, unless a shorter notice period is required by Applicable Law or the relevant order or decision.

(e) Effect of Termination.

(i) The terms of Sections 1 (Capitalized Terms), 5 (Ownership and Use of Data and the Biomass Registry), 7 (Taxes), 8 (Term and Termination), 9(b) (Default; Remedies), 12 (Confidentiality), 14 (Limitation of Liability), 16 (Indemnification), 17 through 25 and any other provisions meant to survive termination or expiration of these Terms of Use, shall survive termination of the Terms of Use.

(ii) Upon termination of access to the Biomass Registry, any Certificates held in Account Holder's Accounts shall be forfeited. Prior to such termination being effective, Account Holder may retire such Certificates or transfer them to another Biomass Registry Participant's Account, in a manner consistent with the Operative Documents and these Terms of Use.

(f) Reinstatement.

(i) Upon the request of Account Holder, Administrator, in its sole discretion, may reinstate Account Holder's access to the Biomass Registry after termination for Account Holder's Default, upon Administrator's determination that Account Holder has resolved such Default and upon receipt of Account Holder's full payment of all Taxes and other charges due prior to termination.

(ii) Administrator shall reinstate an Account Holder's access to the Biomass Registry after termination for Account Holder's Default if directed to do so as a result of the outcome of a dispute resolution proceeding under these Terms of Use.

## **9. DEFAULT; REMEDIES.**

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

(i) Account Holder fails to abide by the Operative Documents or fails to perform any of its duties or obligations under these Terms of Use, other than those set forth below in Sections 9(a)(ii) through (a)(ix), which default is not cured to the satisfaction of Administrator in its sole discretion within five (5) days after notice is given to Account Holder specifying such default.

- (ii) Account Holder fails to pay any of the Taxes or other charges due in accordance with the procedures set forth in Section 7 above within five (5) days of their Due Date.
- (iii) Account Holder or its Representatives alter, tamper with, damage or destroy (1) the Biomass Registry or any portion thereof, or (2) the data of other Biomass Registry Participants.
- (iv) Account Holder uses the Biomass Registry in any manner that, directly or indirectly, violates any Applicable Law.
- (v) All or substantially all of Account Holder's assets are attached or levied under execution (and Account Holder does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency, for reorganization or a similar arrangement is filed by or against Account Holder (and Account Holder fails to secure a stay or discharge thereof within sixty (60) days thereafter); Account Holder is insolvent and unable to pay its debts as they become due; Account Holder makes a general assignment for the benefit of creditors; Account Holder takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Account Holder 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 Account Holder if Account Holder is an entity.
- (vi) Account Holder falsifies or misrepresents any data or other information input into the Biomass Registry by Account Holder or otherwise provides incorrect data or other information to the Biomass Registry in contravention of these Terms of Use.
- (vii) Account Holder makes any false or inaccurate representations in these Terms of Use.
- (viii) Account Holder violates its confidentiality obligations set forth in Section 12.
- (ix) Account Holder receives written notice of a violation of the performance of any particular material term or condition of the Operative Documents or these Terms of Use three (3) or more times during any twelve (12) month period, regardless of whether such violations are ultimately cured.

(b) Remedies. Upon the occurrence of any Default, Administrator shall have the following rights and remedies, in addition to those stated elsewhere in the Operative Documents and these Terms of Use and those allowed by Applicable Law or in equity, any one or more of which may be exercised without further notice to Account Holder:

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

(ii) Upon termination of the use of the Biomass Registry, Account Holder shall be obligated to pay to Administrator all monies due to it, which in the case of a termination as a result of a Default shall include attorneys' fees incurred to enforce Administrator's rights under the Operative Documents and these Terms of Use, and which in any event shall include any interest and costs and expenses due hereunder.

(iii) Account Holder acknowledges that Administrator may notify purchasers of any erroneous Credits, suspend Account Holder's Account, levy an administrative fine or prohibit Account Holder's participation in the Biomass Registry.

(c) Nonwaiver of Defaults. The failure or delay of Administrator in exercising any of its rights or remedies or other provisions of the Operative Documents or these Terms of Use shall not constitute a waiver thereof or affect Administrator's 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. Administrator's receipt of less than the full amount of Taxes or other amounts due shall not be construed to be other than a payment on account then due, nor shall any statement on Account Holder's check or any letter accompanying Account Holder's check be deemed an accord and satisfaction.

## **10. INTELLECTUAL PROPERTY.**

The North American Renewables Biomass Registry name and brand, the Biomass Registry, and any and all content of the Biomass Registry, are protected by copyright and/or other intellectual property laws and any unauthorized use of such intellectual property or information or the Biomass Registry may violate such laws related to their protection. Except as expressly provided herein and in the Operative Documents, none of Administrator or any of its affiliates grants any express or implied right or license of any kind to Account Holder under any patents, copyrights, trademarks, or trade secret information with respect to such intellectual property and/or information and/or the Biomass Registry.

Except as expressly provided by copyright law, the Operative Documents or these Terms of Use, Account Holder 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 such intellectual property or information or the Biomass Registry, either in whole or in part, other than:

- (a) reports or other data created for use by or otherwise disseminated to Account Holder (including authorized Representatives of Account Holder) under the Operating Procedures,
- (b) as may be required or compelled by Applicable Law,
- (c) information that it has provided to the Biomass Registry, whether or not it is Confidential Information, or
- (d) as Administrator may agree in its sole discretion.

Any authorized use of the Biomass Registry's logo and Administrator's trademarks shall be precisely as described in the Operative Documents, and Account Holder shall not alter such logo or trademarks in any respect (including without limiting changing the color scheme thereof). Account Holder acknowledges that Account Holder does not acquire any ownership rights by downloading copyrighted material.

## **11. REPRESENTATIONS AND WARRANTIES.**

Throughout the term of these Terms of Use, including without limitation upon each creation, transfer or retirement of a BFC by Account Holder, Account Holder represents and warrants to Administrator that:

- (a) If other than a natural person, Account Holder is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- (b) Account Holder has all corporate and other authority and all regulatory and other consents, approvals and authorizations necessary for it to legally (i) enter into and perform its obligations under these Terms of Use and the Operative Documents and (ii) engage in all of its activity (including the creation, receipt and transfer of Certificates) on or relating to the Biomass Registry;
- (c) The signatory of these Terms of Use has the authority to execute these Terms of Use on behalf of Account Holder, and these Terms of Use are binding on and enforceable against Account Holder in accordance with their terms;
- (d) Account Holder will only use the Biomass Registry for creating, importing, transferring and retiring Certificates that are either (i) attributable to the Assets included in the Biomass Registry or (ii) imported into the Biomass Registry in the manner specified by the Operative Documents;

- (e) Account Holder has not registered and will not register any Assets simultaneously both in the Biomass Registry and in any other system that tracks the environmental attributes related to such Assets, nor will any transaction of an Asset's environmental attributes be conducted outside of the Biomass Registry if the Certificates associated with that Asset are maintained within the Biomass Registry;
- (f) Account Holder meets all of the requirements for participation in the Biomass Registry, as set forth in the Operative Documents;
- (g) Neither Account Holder nor any third party, if any, having a Beneficial Ownership Right in the Certificates held in one of Account Holder's Accounts or sub-accounts has retired, sold, claimed, represented elsewhere or used, or will retire, sell, claim or represent elsewhere or use, any of its Certificates to satisfy obligations in any jurisdiction or otherwise without reporting such disposition within the Biomass Registry;
- (h) Collectively, Account Holder and the third parties, if any, having a Beneficial Ownership Right in the Certificates held in one of Account Holder's Accounts or sub-accounts have legal title and all Beneficial Ownership Rights with respect to the Certificates issued or to be issued to Account Holder and/or held in Account Holder's Accounts or sub-accounts;
- (i) Account Holder has been authorized to act on behalf of each third party having a Beneficial Ownership Right in the Certificates held in Account Holder's Accounts or sub-accounts;
- (j) No person or entity, other than Account Holder or the third parties, if any, having a Beneficial Ownership Right in the Certificates held in Account Holder's Accounts or sub-accounts, can claim the right to the Certificates for which the Account Holder is seeking issuance or that are held in Account Holder's Accounts or sub-accounts; and
- (k) All data and other information provided to the Biomass Registry or Administrator by Account Holder and/or its Representatives are either owned legally and beneficially by Account Holder or Account Holder otherwise has the right to provide such data and other information, and all such data and other information are true and correct in all material respects.

## **12. CONFIDENTIALITY.**

- (a) The Biomass Registry, including the selection, arrangement and compilation of data, may be comprised of confidential, market sensitive and trade secret information of the Account Holder and other Biomass Registry Participants. Administrator agrees (i) to use and maintain information provided by Account Holder in accordance with the Biomass Registry's Privacy Policy and (ii) not to knowingly use or disclose Confidential Information (as defined below) provided by Account Holder except as authorized by Account Holder or these Terms of Use, or when Account Holder requests and authorizes

the transfer of Certificates to another Biomass Registry not controlled and operated by Administrator. Account Holder agrees not to use or disclose the information contained in the Biomass Registry, including any other Biomass Registry Participant's Confidential Information, except as authorized by the Operative Documents and these Terms of Use. The obligations of confidentiality in these Terms of Use shall survive its termination without limitation in duration for so long as information continues to meet the definition of Confidential Information.

(b) As used in these Terms of Use, the following information is deemed "Confidential Information":

- (i) Total number of Certificates in Account Holder's Account and any sub-account thereof, including without limitation each Group Retirement Sub-account;
- (ii) The amount and timing of specific Certificate transfers, including transfers from one Account Holder to another and transfers among the sub-accounts of an Account Holder; and
- (iii) Those portions of communications between Account Holder and Administrator regarding the Biomass Registry that contain any of the aforementioned information that would be treated as Confidential Information;

*provided, however*, that Confidential Information does not include any information that can be established by written documentation: (i) to have been publicly known prior to disclosure of such information by the disclosing Party (the "Disclosing Party") to the receiving Party (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 Applicable 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; or (viii) to be information Administrator is otherwise permitted to disclose under the Operating Procedures.

(c) Confidential Information may be aggregated with other information in the Biomass Registry and included in public reports as described more fully in the Operating

Procedures, so long as it is sufficiently aggregated such that a third-party reviewer could not determine the portion of such aggregated information that is Confidential Information of a particular Account Holder.

(d) Confidential Information is the sole and exclusive property of the Biomass Registry Participant who provided the information to the Biomass Registry or on whose behalf the information was provided, and shall not be used by Account Holder for any purpose other than the purposes set forth in the Operative Documents and these Terms of Use.

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

(A) immediately notify Administrator that Account Holder has obtained such access; and

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

(f) Except as specifically set forth in this Section 12, Administrator shall have no obligation to protect or maintain the confidentiality of any information provided by Account Holder to Administrator or to the Biomass Registry, and Account Holder expressly consents to the disclosure of any such information that is not Confidential Information hereunder.

### **13. DISCLAIMER OF WARRANTY.**

(a) The data contained in the Biomass Registry has been gathered by Administrator from sources believed by it to be reliable, including but not limited to Biomass Registry Participants, Account Holder and Account Holder's Representatives. Administrator does not warrant that the information in the Biomass Registry is correct, complete, current or accurate, nor does Administrator warrant that the Software will be error-free or bug-free. Administrator has no obligation to audit, validate or otherwise verify any information contained in the Biomass Registry.

(b) THE BIOMASS REGISTRY IS PROVIDED "AS IS," AND ADMINISTRATOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THESE TERMS OF USE, THE OPERATIVE DOCUMENTS OR THE ADEQUACY OR PERFORMANCE OF THE BIOMASS REGISTRY, AND ADMINISTRATOR HEREBY DISCLAIMS TO THE EXTENT PERMITTED BY LAW ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE.

ADMINISTRATOR DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER SHALL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT THE PROVISION OF SUCH SERVICES SHALL ALWAYS BE EXECUTED WITHOUT ERRORS OR OMISSIONS.

(c) Administrator shall not be responsible for the acts or omissions of any Account Holder or any other party who inputs data into the Biomass Registry or from whom data is obtained for inclusion on the Biomass Registry.

(d) Account Holder is solely responsible for the protection, security and management of usage and security of its computer network. Administrator shall not compensate Account Holder for damages incurred due to violations of the security of Account Holder's computer network, nor shall Account Holder make deductions or set-offs of any kind for Taxes or other charges resulting therefrom.

#### **14. LIMITATION OF LIABILITY.**

ACCOUNT HOLDER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE BIOMASS REGISTRY AND THE BIOMASS REGISTRY SITE. ADMINISTRATOR SHALL HAVE NO LIABILITY TO ACCOUNT HOLDER OR ANY THIRD PARTY FOR ANY DAMAGES RELATING TO THE BIOMASS REGISTRY, BIOMASS REGISTRY SITE, SERVICE DISRUPTION, PERFORMANCE OR NONPERFORMANCE BY ADMINISTRATOR OR IN ANY WAY RELATED TO THESE TERMS OF USE, REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. ADMINISTRATOR SHALL NOT 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 ACCOUNT HOLDER OR ANY THIRD PARTIES, EVEN IF ADMINISTRATOR HAS BEEN ADVISED BY ACCOUNT HOLDER OR ANY THIRD PARTY OF SUCH DAMAGES. ADMINISTRATOR DISCLAIMS ANY LIABILITY FOR ERRORS, OMISSIONS OR OTHER INACCURACIES IN ANY PART OF THE BIOMASS REGISTRY, OR THE REPORTS, CERTIFICATES OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO THE BIOMASS REGISTRY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACCOUNT HOLDER HEREBY RELEASES AND PROTECTS ADMINISTRATOR, ANY SUBSIDIARIES OR OTHER CORPORATE AFFILIATES THEREOF, THEIR SUCCESSORS AND ASSIGNS, AGENTS, CONTRACTORS, SERVICE PROVIDERS AND VENDORS FROM ANY AND ALL LIABILITY WITH RESPECT TO ANY DAMAGES OR INJURIES INCURRED BY ACCOUNT HOLDER AS RELATES TO THE BIOMASS REGISTRY, BIOMASS REGISTRY SITE OR THESE TERMS OF USE.

#### **15. LOGINS, PASSWORDS AND BIOMASS REGISTRY IDs.**

Account Holder agrees to assume sole responsibility for the security of any logins, passwords and Biomass Registry IDs issued to Account Holder and its Users for accessing the Biomass Registry. Account Holder agrees to immediately notify Administrator of any suspected unauthorized use of Account Holder's login(s), password(s), Biomass Registry ID(s) or Account or any other suspected breach of security.

#### **16. INDEMNIFICATION.**

Account Holder agrees to defend, indemnify and hold harmless each of Administrator and its subsidiaries and affiliates and each of their respective owners, trustees, partners, members, officers, directors, employees, agents and representatives (each an "Indemnified Party") from and against any violations by Account Holder or its Users of any Applicable Law 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 attorneys' fees and court costs) of any nature whatsoever ("Losses") arising out of, resulting from, attributable to or related to the use of the Biomass Registry by Account Holder or its Users, or Account Holder's or its Users' violation of any of the Operative Documents or 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 such Indemnified Party); or (c) any financial, business, commercial or other judgment, decision, act or omission based upon or related to the information or the Biomass Registry. Notwithstanding the foregoing, Account Holder shall not defend, indemnify or hold harmless an Indemnified Party from and against any Losses to the extent that the Losses are caused by the conduct of such Indemnified Party that a court of law or arbitral panel has determined amounted to gross negligence or willful misconduct.

#### **17. NO ASSIGNMENT, TRANSFER OR ENCUMBRANCE BY ACCOUNT HOLDER.**

Neither any Operative Document nor these Terms of Use nor any rights hereunder or thereunder may be assigned, sublicensed, encumbered, pledged, mortgaged or otherwise transferred by Account Holder, in whole or in part, whether voluntary or by operation of law, without the express prior written consent of Administrator, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **18. RELATIONSHIP OF PARTIES.**

Each Party is an independent contractor under these Terms of Use. No Party has the authority to execute documents that purport to bind the others, 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 and the Operative Documents are for the sole and exclusive benefit of Account Holder and Administrator and its successors and permitted assigns, and except as set forth in Section 16, no third party, including without limitation any third party having Beneficial Ownership Rights in a Certificate, will have any rights under these Terms of Use or the Operative Documents whatsoever.

**20. FORCE MAJEURE.**

No 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 Account Holder'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, arbitration panel or governmental administrative agency, such holding shall not affect the validity of the other parts of the Terms of Use, which shall at all times remain in full force and effect.

**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 any Party to enforce each and every such provision thereafter. The express waiver by any 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, facsimile, or first class, registered or certified mail, postage prepaid, or by overnight courier service to the following addresses or such other address as either Party may specify in writing:

If to Administrator:

APX, Inc.  
2001 Gateway Place, Suite 315W  
San Jose, CA, 95110 United States  
+1.408.517.2100  
Attn: NAR Biomass Registry Administrator  
Email: nar@apx.com

With a copy to:

APX, Inc.  
2001 Gateway Place, Suite 315W  
San Jose, CA 95110  
United States  
Attn: Contract Administration  
Facsimile: (408) 573-7113

If to Account Holder:

To the address provided at the time of registration, as updated by Account Holder from time-to-time

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 facsimile, it shall be deemed received on the day said notice was sent to the other Party. For service of notice via email, it shall be deemed received when acknowledgement of its receipt has been given by the Party due to receive the notice.

#### **24. GOVERNING LAW AND DISPUTE RESOLUTION.**

(a) These Terms of Use shall be governed exclusively by the laws of the State of New York without regard to its rules on conflicts of laws.

(b) 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 arising out of the Biomass Registry (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.

(c) 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. The arbitrator(s) will have no authority to award punitive damages nor any other damages not measured by a 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 any Party nor the arbitrator(s) may disclose the existence or results of any arbitration hereunder without the prior written consent of all Parties.

(d) 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 attorneys' fees and other costs incurred in such proceeding, *provided that* if a dispute is initiated in bad faith, as determined by the arbitrator(s), the Party initiating the dispute shall be responsible for all of the other Party's defense costs, and provided further that Administrator shall be entitled to payment of its costs and expenses, including without limitation attorneys' fees, to the extent set forth in Sections 9 (b)(ii) and 16.

(e) 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. ENTIRE AGREEMENT.**

The Operative Documents, including without limitation the General Terms of Use, and these Terms of Use, including any and all exhibits attached thereto and hereto, represent the entire agreement of the Parties with respect to the subject matter thereof and hereof and supersede any conflicting terms in any other prior or contemporaneous oral or written agreements and any and all other communication.