



REC CONFIRMATION

The purchase and sale (the “**Transaction**”) confirmed by this Confirmation is subject to the Terms and Conditions for the Sale and Purchase of Renewable Energy Credits, attached hereto as Exhibit A. Capitalized terms are defined in the Definitions section. *If you accept the terms of this Transaction, please sign below indicating your acceptance and send this Confirmation back to Sol Systems.*

Transaction

Transaction Date	July 26, 2024
Buyer	Sol Systems, LLC
Seller	City of Rochelle
RECs	Pennsylvania “Tier I” Renewable Energy Credits as defined in the RPS (“ RECs ”).
Renewable Portfolio Standard(s)	The Pennsylvania Alternative Energy Portfolio Standard as set forth in 73 P.S. § 1648.1 et seq., as amended, and all associated order, rules, and regulations promulgated with respect thereto, including and 52 Pa. Code §75.1, et seq, as in effect on the date of this Transaction (“ RPS ”).
Vintage(s) (or Reporting Year(s))	<ol style="list-style-type: none"> 1. 2025 2. 2026 3. 2027
REC Quantity	17,500 per Reporting Year
Contract Price	\$35.25/ REC
System Location(s)	<p>All systems identified herein will be part of the portfolio (the “Systems”):</p> <ol style="list-style-type: none"> 1. 4.8MW Bio-Gas Landfill-Gas-To Energy Facility, located in Rochelle, Illinois. <p>For avoidance of doubt, the specified volume of RECs must be produced from the specific Systems identified in the System Location(s) section of this Confirmation.</p>
Delivery Date (or Annual Delivery Date)	Monthly, with the full vintage volume to be delivered on or before July 15 of the same Reporting Year
Delivery Obligation	Firm. With respect to Seller’s delivery obligation under this Confirmation, the term “ Firm ” means that Seller guarantees that it shall deliver the specified fixed volume of RECs for each applicable Reporting Year indicated to Buyer without excuse. Force Majeure shall not excuse performance of Seller’s Firm delivery obligation under the Transaction.



EXHIBIT A
**TERMS AND CONDITIONS FOR THE SALE AND PURCHASE OF
RENEWABLE ENERGY CREDITS**

I. Transaction

- 1.1 Single Agreement. These terms and conditions ("***Terms and Conditions***") for the sale and purchase of RECs and the REC Confirmation to which these Terms and Conditions are attached (the "***Confirmation***") shall constitute a single integrated agreement between the Parties (the "***Agreement***").
- 1.2 Procedure. Subject to the Confirmation(s) and these Terms and Conditions, Seller shall sell to Buyer and Buyer shall purchase from Seller the specified RECs at the Contract Price ("***Purchased RECs***").
- 1.3 Confirmation and Binding Agreement. No Confirmation will be binding unless signed by both Parties.
- 1.4 Priority. In the event of any inconsistency between these Terms and Conditions and the Confirmation, the Confirmation will prevail for the purposes of the relevant Confirmation.

II. Transfer

- 2.1 Transfer of Purchased RECs and Title. Seller shall sell, transfer, convey and assign to Buyer all of Seller's right, title and interest of any nature to all Purchased RECs, including the right to report generation and the environmental attributes thereof for any other mandatory or optional compliance program in addition to that authorized under the RPS. Seller shall transfer the Purchased RECs to Buyer via the Applicable Tracking System, so that all rights, title to and interest in the Purchased RECs shall transfer from Seller to Buyer, free and clear of any claim of title or interest by any other person. Title and interest in the Purchased RECs shall transfer upon delivery to the Buyer's Account.
- 2.2 Annual Delivery Shortfall. On or before each Annual Delivery Date during the term of Seller's delivery obligations under this Agreement, Seller shall deliver to Buyer a number of RECs in an amount that is no less than the Firm volume quantity applicable for each Reporting Year. In the event that the Purchased RECs in any Reporting Year fail to reach the Firm volume quantity for such Reporting Year (the amount by which the Firm volume quantity exceeded the Purchased RECs, a "***Shortfall***"), then, within ten (10) business days of each Annual Delivery Date, Seller shall deliver to Buyer a quantity of RECs equal in type, character and amount, and which meet all other requirements pursuant to the RPS and this Agreement, as the Shortfall ("***Substitute RECs***"), and upon such delivery of Substitute RECs in full, Seller shall be deemed to have satisfied the Firm volume quantity requirement for the applicable Reporting Year. If Seller fails to deliver Substitute RECs within 15 business days, then Seller shall be obligated to pay to Buyer damages as set forth in Section 5.2(iv)(a).
- 2.3 Cooperation. In all cases, the Parties will cooperate and execute such documentation as is reasonably necessary to carry out the provisions of this Agreement and to allow Buyer to transact within the Applicable Tracking System for all Purchased RECs and other related procedural matters handled by the Applicable Tracking System. Without limiting the generality of the foregoing, Seller shall take all actions and execute and deliver all documents reasonably requested by Buyer to effectuate delivery of the Purchased RECs to Buyer or, if directed by Buyer, any designee of Buyer, including, if requested, the execution of a transfer certificate or certification. Seller further agrees to take any actions and execute and deliver any documents reasonably requested by Buyer to comply with the requirements of the RPS and the Applicable Tracking System, and any associated regulatory or administration obligations relating to the registration, verification, or certification of any Purchased RECs, and the transfer of the ownership of Purchased RECs from Seller to Buyer or from Buyer to any subsequent transferee, by the applicable agencies, Applicable Tracking System, or other applicable regulatory bodies.



2.4 Sale or Assignment of the System and Real Property. Seller shall not transfer, sell or assign the System or its interest the real property on which the System is located to a third party (the “*Third Party Purchaser*”) without notifying the Third Party Purchaser of Buyer’s prior purchase of all right, title and interest in and to the Purchased RECs, and complying with one of the following two options: Seller must either (1) assign this Agreement to the Third Party Purchaser and the Third Party Purchaser must assume all Seller rights and responsibilities under this Agreement or (2) provide written notice to the Third Party Purchaser that the Third Party Purchaser will be unable to sell RECs from the System during the term of the delivery obligations under this Agreement, which shall remain the sole property and entitlement of Buyer. Seller shall provide Buyer with a copy of either such assignment and assumption or such notice, signed by both Seller and the Third Party Purchaser.

III. Payment

- 3.1 Payment Date. Buyer shall pay the Contract Price within ten (10) calendar days of the date Buyer receives an invoice from Seller reflecting the total amount due to Seller for the transferred quantity of Purchased RECs the (“*Payment Date*”).
- 3.2 Late Payment. All overdue payments shall bear interest from the Payment Date to the date of actual payment at a rate equal to two percent (2%) over the per annum rate of interest equal to the prime lending rate most recently published by the Wall Street Journal.
- 3.3 Payment Method. Payment shall be made by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as notified in writing to the Party making payment.
- 3.4 Disputes. To the extent a Party, in good faith, disputes any part of an invoice, such Party shall pay any undisputed amount invoiced by the Payment Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall be forwarded to the Party to whom such amount is owed within fifteen (15) business days of such determination, along with any interest accrued at the rate specified in Section 3.2 for overdue payments from, and including, the Payment Date, but excluding the date paid.
- 3.5 Payment Netting. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions now or hereinafter existing between the Parties through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of RECs during the applicable period under this Agreement, including any related damages calculated pursuant to Section 2.2 or Section 5.2, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- 3.6 Government Charges. Seller shall pay or cause to be paid all taxes and fees imposed by any government authority on or with respect to the Purchased RECs transferred under a Confirmation (“*Governmental Charges*”) arising prior to the point of transfer. Buyer shall pay or cause to be paid all Governmental Charges at and from the point of transfer (other than income taxes which may be related to the sale of the Purchased RECs and are, therefore, the responsibility of Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges that are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Confirmation(s) subject to these Terms and Conditions. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.
- 3.7 Representations and Warranties.



3.7.1 Mutual Representations. On and as of the Transaction Date (as defined in the Agreement), each Party represents and warrants to the other Party:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (c) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like;
- (d) there is no pending or (to such Party's actual knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects such Party's ability to perform its obligations under this Agreement; and
- (e) (i) it has the financial capability and legal authority to perform its obligations associated with this Agreement; and (ii) it is solely responsible for performing its obligations hereunder.

3.7.2 Seller Representations and Warranties. On and as of the Transaction Date and as of each date on which RECs are delivered to Buyer hereunder, Seller represents and warrants to Buyer that:

- (a) Seller will transfer to Buyer good and marketable title to each REC required to be transferred hereunder, such RECs shall meet the Vintage specifications set forth in the Confirmation and the requirements of the RPS and the Applicable Tracking System, and each Purchased REC shall be sold and delivered to Buyer under this Agreement free and clear of any liens, claims, security interest, taxes, title defects, and other encumbrances of any kind whatsoever;
- (b) Each System has been registered with an account holder with the Applicable Tracking System, has achieved its Commercial Operation Date, and is qualified in all respects under the RPS to create RECs, and the owner of each System has obtained, and will maintain, all necessary regulatory approvals required to enable it to provide the Purchased RECs as required by this Agreement and the Purchased RECs sold hereunder are and will be compliant with the RPS as it exists on the Transaction Date and as of each date on which RECs are delivered to Buyer hereunder;
- (c) The Purchased RECs sold hereunder have not been, and shall not be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- (d) To the extent that Seller has pledged any of its assets or any asset forming part of or relating to the System(s) to a lender as part of a secured lending transaction, Seller has received a written consent and acknowledgment from such secured lender, in a form and substance reasonably acceptable to Buyer, or such other evidence reasonably acceptable to Buyer (i.e., a purchase and sale agreement or credit agreement) and which may be relied upon by Buyer, that excepts the Purchased RECs from the scope or definition of any collateral pledged to secure the obligations under such loan, a copy of which instrument shall have been delivered to Buyer;
- (e) Seller has no knowledge of any facts or circumstances that could materially and adversely



affect its ability to perform its obligations hereunder, including with respect to its creditworthiness;

- (f) All legal or equitable title, right and interest in the Purchased RECs that are transferred hereunder will immediately vest in Buyer upon delivery to Buyer's Account, and in any event, Buyer will (i) have the exclusive rights to make all claims as to such Purchased RECs and (ii) have the right to report and register, as applicable, the exclusive ownership of such Purchased RECs with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program;
- (g) Seller (i) has not sold and, will not in the future sell or attempt to sell to any other person the Purchased RECs purchased by Buyer under this Agreement during the term of this Agreement; (ii) has entered into this Agreement as a principal (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), and (iii) has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; and
- (h) The information provided to Buyer by Seller pursuant to this Agreement as of the Transaction Date is true and accurate in all material respects including but not limited to all information concerning System registration, recordation, insurance and reporting.

IV. **Change in Law**

Buyer shall have the right, but not the obligation, to terminate the Transaction and any confirmation, and shall be relieved of all its obligations related to the foregoing, upon the occurrence of a Change in Law.

"Change in Law" means the occurrence after the Transaction Date of any change, adjustment or challenge to any legislation, regulations, ordinances or similar authority (including their interpretation) that may cause the purchased RECs to lose commercial value in any material respect, or otherwise prevent or inhibit in any way, or have a material impact on, (i) Buyer's ability to purchase or resell the purchased RECs (including any limitation to the shelf life of RECs), (ii) a system's ability to produce RECs, (iii) the RPS's Alternative Compliance Payment, or (iv) the balance of the commercial agreement (including economic benefits, risk allocation, costs and liabilities) existing between the Parties under the Transaction and the Confirmation as of either the Transaction Date or the occurrence of the Change in Law.

V. **Default**

5.1 **Event of Default**. An Event of Default shall mean, with respect to a Party ("**Defaulting Party**") that has failed to fulfill an obligation owed hereunder to the other Party ("**Performing Party**"):

- (a) The failure to make any payment to the Performing Party, if such failure is not remedied within ten (10) calendar days after written notice is given by the Performing Party;
- (b) The failure of Seller to transfer at least the Firm volume quantity of Purchased RECs as set forth in the Confirmation (or Substitute RECs as set forth in Section 2.2);
- (c) Either Party's actual fraud, willful misconduct or material breach of the Confirmation beyond any applicable notice and cure period;
- (d) The filing of a petition for voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily



taking advantage of any such law or act by answer or otherwise;

- (e) Any representation or warranty made that proves to have been false or misleading in any material respect when made or fails to remain true if such failure would reasonably be expected to result in a material adverse impact on the other Party, and such misrepresentation or failure is not cured within thirty (30) days after written notice thereof is delivered to the Defaulting Party; or
- (f) Any other failure to follow or otherwise comply with any of the material provisions of these Terms and Conditions, if such failure is not remedied within thirty (30) days after written notice is given by the Performing Party.

5.2 Remedies for an Event of Default. Upon the occurrence and notice to the Defaulting Party of an Event of Default and after any applicable cure period has expired, the Performing Party shall have the right, but not the obligation, to do any or all of the following: (i) by written notice to the Defaulting Party, designate a day, no earlier than the day such notice is effective and no later than twenty (20) calendar days after such notice is effective, as an early termination date to accelerate all amounts owing between the Parties, (ii) suspend performance, and (iii) exercise such remedies as provided herein, including for the right to receive from the Defaulting Party a payment of damages, which shall include:

(a) in the event that Buyer is the Performing Party, the payment of damages equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price of the remaining number of Purchased RECs not delivered to Buyer over the remaining term of the delivery obligations of this Agreement, plus an administrative fee of one percent of the Contract Price (1%) for each such Shortfall number of RECs, plus reasonable third party fees (including broker fees) and legal costs incurred by Buyer in enforcement and protection of its rights related to such Event of Default, or

(b) in the event that Seller is the Performing Party, the payment of damages equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price of the remaining number of Purchased RECs not received by Buyer, plus reasonable third party fees (including broker fees) and legal costs incurred by Seller in enforcement and protection of its rights related to such Event of Default.

5.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and agrees that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance. Seller shall be entitled to reduce the amount of monetary damages payable by Seller to the extent Seller provides Buyer with replacement RECs which are the same in type, character and amount, and that meet all other requirements pursuant to the RPS and this Agreement, as those contemplated in the applicable Confirmation to replace the RECs that would have been available if the obligation to provide RECs under the Confirmation had been fully met.

VI. Force Majeure.

Neither Party shall be considered in default under this Agreement for any delay or failure to perform any of its obligations under this Agreement, if such delay or failure is due to an event of Force Majeure. A Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party: (a) provides prompt notice (within ten (10) business days) of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement; (b) exercises all reasonable efforts to continue to perform its obligations under this Agreement; (c) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute; (d) exercises all reasonable efforts to mitigate or limit damages to the other Party; and (e) provides prompt notice (within ten (10) business days) to the other Party of the cessation of the event or condition giving rise to its excuse from



performance.

VII. Miscellaneous.

- 7.1 Limitation of Liability. THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES OR LOST PROFITS.
- 7.2 Assignment. No right or obligation under this Agreement may be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided* that Seller shall be permitted to assign its rights to receive the proceeds from the sale of the Purchased RECs as contemplated under this Confirmation as collateral security for financing without the prior written consent of Buyer, on the condition that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in this Confirmation or these Terms and Conditions, including extension of any cure periods or additional remedies for financing providers, and (ii) any such financing shall not impair or be construed as a waiver of (A) Seller's obligations under Section 2.1 of these Terms and Conditions to transfer all Purchased RECs to Buyer, free and clear of any claim of title or interest by any other person, or (B) any of Seller's representations and warranties under Section 3.7 of these Terms and Conditions.
- 7.3 [Omitted].
- 7.4 Governing Law. These terms and conditions will be governed by laws of the Illinois without regard to its principles of conflicts of law, and the Parties hereby consent to the jurisdiction of the administrative and judicial tribunals of the Ogle County, Illinois, as applicable.
- 7.5 No Waiver. Any failure by either Party at any time to enforce any of the provisions of these terms and conditions shall not be construed as a waiver of such provision or any other provisions hereof.
- 7.6 Confidentiality.

7.6.1 Confidential Information. Except as provided in this Section 7.6 and as required by the Illinois Freedom of Information ("FOIA") or the Illinois Open Meetings Act, neither Party shall publish, disclose or otherwise divulge Confidential Information to any person at any time during or after the term of the delivery obligations under this Agreement, without the other Party's prior written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, or actual or potential investors, lenders or purchasers, or representatives, agents, and employees who have a need to know related to the implementation of the Agreement and are bound by this confidentiality obligation. "**Confidential Information**" means the terms of the Agreement and all oral and written information exchanged between the Parties with respect to the Confirmation, including the Contract Price, payments to be made and Purchased RECs to be exchanged. The following information does not constitute "Confidential Information": (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement, (ii) information that was already available to either Party on a non-confidential basis prior to the Agreement, and (iii) information that becomes available to either Party on a non-confidential basis from a source other than other Party, if such Party reasonably determines that the other source was not subject to a nondisclosure obligation.

7.6.2 Required Disclosure. If required by any law, statute, ordinance, decision order or regulation of a court or other governmental authority, a Party may release Confidential Information to the extent so required, and a Party may disclose Confidential Information to outside advisors or to outside accountants



in connection with external audits.

- 7.7 Severability. If any provision in these terms and conditions is determined to be invalid, void, voidable or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void, make voidable or make unenforceable any other provision.
- 7.8 Entire Agreement. The provisions of these Terms and Conditions along with the Confirmation shall constitute the entire agreement between the Parties, superseding all prior discussions and agreements between the Parties with respect to the subject matter hereof.
- 7.9 Disputes. In the event of any dispute, within ten (10) calendar days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within twenty (20) calendar days of initiating such discussions, or within thirty (30) calendar days after notice of the dispute, the Parties may then file a lawsuit in the state or federal courts serving Ogle County, Illinois to resolve the dispute.
- 7.10 Multi-State Registration. Seller hereby grants Buyer the right to register the System(s) in multiple states as a renewable energy generator for the purposes of selling RECs from such System in such states. If necessary, Seller will provide Buyer with such additional information as needed for such registration.
- 7.11 Forward Contract; Bankruptcy Treatment.
- 7.11.1 Forward Contract. The Parties acknowledge and agree that (i) all transactions contemplated by this Agreement constitute a single integrated “forward contract” within the meaning of the U.S. Bankruptcy Code, (ii) that Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code, (iii) that this Agreement constitutes a “master netting agreement” within the meaning of the U.S. Bankruptcy Code and that (iv) sections 362(b)(6), 362(b)(27), 548(d)(2), 556 and 562 shall apply to the Parties’ contractual rights under this Agreement.
- 7.11.2 Bankruptcy Treatment. In any case under the U.S. Bankruptcy Code commenced by or against Seller (a “*Seller Bankruptcy Case*”), (i) if Seller obtains an order rejecting this Agreement pursuant to section 365 of the U.S. Bankruptcy Code (a “*Rejection Order*”), Buyer may elect, in its sole discretion and without prejudice to any of Buyer's other rights under the Agreement, to calculate its damages upon the rejection of this Agreement pursuant to a Rejection Order in accordance with Sections 5.1 and 5.2 of these Terms and Conditions, and (ii) the provisions of Section 7.3 of these Terms and Conditions shall apply with respect to any new loan or financing, including financing under section 364 of the U.S. Bankruptcy Code, sought in a Seller Bankruptcy Case. For the avoidance of doubt, nothing in this Section 7.11.2 shall be construed as Buyer’s acknowledgement, consent, or waiver of objections to Seller's ability to reject this Agreement or obtain financing in any Seller Bankruptcy Case. The same Bankruptcy Treatment provided for in this Section 7.11.2 shall also apply to Buyer with Seller having the same rights and discretion granted herein.
- 7.12 Financial Information. If requested by a Party, the other Party shall deliver (i) within one hundred and twenty (120) calendar days following the end of each fiscal year, a copy of its annual report containing unaudited consolidated financial statements for such fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Party diligently pursues the preparation, certification and delivery of the statements.

VIII. Definitions.



“**Alternative Compliance Payment**” shall mean any monetary program made to a government authority as an alternative to submitting RECs for compliance with an RPS.

“**Applicable Tracking System**” shall have the meaning specified in the Confirmation.

“**Buyer**” shall have the meaning specified in the Confirmation.

“**Buyer’s Account**” means the account owned or controlled by Buyer in the Applicable Tracking System.

“**Change in Law**” shall have the meaning specified in Section 4.

“**Commercial Operation Date**” means the date upon which the System has been constructed, tested, and is fully operational for the purpose of generating and delivering the energy and RECs, including without limitation, that Seller has successfully completed interconnection with the transmission provider, received permission to operate from the applicable utility provider, obtained all required state and local all permits, approvals, and requirements necessary for Seller to perform its obligations under this Agreement, and that Seller has installed and tested the Required Meter and provided Buyer will adequate remote monitoring access as set forth in these Terms and Conditions.

“**Contract Price**” shall mean the amount payable by Buyer to Seller for Purchased RECs as agreed upon in the Confirmation.

“**Force Majeure**” affecting a Party means an event or circumstance that materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance (i) was not reasonably anticipated as of the Transaction Date; (ii) is not attributable to fault or negligence on the part of that Party; (iii) is caused by factors beyond that Party’s reasonable control; and (iv) for which, despite the exercise of due diligence and taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences. Force Majeure does not include economic hardship, a power grid failure (except if caused directly by a Force Majeure event), or insufficiency, unavailability, failure or diminishment of resources, except as a result of an event that would otherwise qualify as a Force Majeure.

“**Party**” means either Buyer or Seller, and “**Parties**” means collectively Buyer and Seller.

“**Payment Date**” shall have the meaning specified in Section 3.1.

“**Renewable Energy Certificates**” or “**RECs**” means the generation attribute of the electrical energy output pursuant to the RPS.

“**Replacement Price**” means the purchase price at which Buyer, acting in a commercially reasonable manner, purchases replacement RECs equal in replacement RECs which are the same in type, character and amount, and that meet all other requirements pursuant to the RPS and this Agreement of the remaining shortfall in the number of Purchased RECs not delivered to Buyer from one or more third parties (inclusive of reasonable brokerage commissions, fees and out of pocket expenses), or at Buyer’s option (it being acknowledged that Buyer shall not be required to enter into an actual replacement transaction), the market price for such shortfall number of Purchased RECs not delivered to Buyer, as determined by Buyer in a commercially reasonable manner (which may include, without limitation, reference to information supplied by one or more third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, or other relevant market data in the relevant markets, comparable transactions, such as brokers’ quotes for replacement strips discounted to present value and breakage fees, or forward price curves based on economic analysis of the relevant markets);



provided, however, in no event shall such price in any case exceed the Alternative Compliance Payment amount (or other similar penalty or payment in lieu of RECs) applicable to RECs, as the case may be, from the Reporting Year for which a such a shortfall exists.

“**RPS**” shall mean the state renewable portfolio standard or other similar voluntary or required program with respect to which exists a market, registry or reporting for RECs, and is specified in the Confirmation.

“**Sales Price**” means: the price at which Seller, acting in a commercially reasonable manner, resells the Purchased RECs not received by Buyer, deducting from such proceeds any broker fees, or at Seller’s option (it being acknowledged that Seller shall not be required to enter into an actual replacement transaction), the market price the Purchased RECs not received by Buyer, as determined by Seller in a commercially reasonable manner (which may include, without limitation, reference to information supplied by one or more third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, or other relevant market data in the relevant markets, comparable transactions, such as brokers’ quotes for replacement strips discounted to present value and breakage fees, or forward price curves based on economic analysis of the relevant markets); *provided, however*, in no event shall such price in any case exceed the Alternative Compliance Payment amount (or other similar penalty or payment in lieu of RECs) applicable to RECs, as the case may be, from the Reporting Year.

“**Seller**” shall have the meaning as specified in a Confirmation.

“**System**” means each power facility specified in the Confirmation.

“**Transaction Date**” means the effective date of the Confirmation, as set forth in the Confirmation.

“**Vintage**” or “**Reporting Year**” means the calendar year or other 12-month period specified in a Confirmation in which the Purchased RECs are created or first valid for use under the RPS.