

**MASTER RENEWABLE ENERGY CERTIFICATE  
PURCHASE AND SALE AGREEMENT**

This Master Renewable Energy Certificate Purchase and Sale Agreement (the “Master Agreement”) is made as of this 17 day of September, 2019 (“Effective Date”), by and between the City of Palo Alto, California, a chartered California municipal corporation with its primary business address at 250 Hamilton Avenue, Palo Alto, California 94301 (“City”) and ACT Commodities Inc with its primary business address at 437 Madison Avenue, Suite 17A, New York, NY 10022 (“Counterparty A”). Counterparty A and City may be referred to in the Master Agreement individually, as a “Party” and/or collectively, as “the Parties.” This Master Agreement, together with Confirmation Letters, Attestation Form, and other exhibits related to REC Transaction(s) shall be referred to as “Agreement(s).”

**RECITALS:**

- A. The Parties wish to buy and sell RECs (as defined herein) on the terms set forth in this Master Agreement;
- B. City and Counterparty A wish to enter into this Master Agreement to facilitate future Renewable Energy Certificate (REC) purchases and/or sales; and
- C. This Master Agreement facilitates, but does not guarantee, Counterparty A’s qualifications with respect to future REC Transactions, and it does not guarantee that the City will enter into any future REC Transactions with the Counterparty A.

NOW, THEREFORE, in consideration of the recitals and the covenants, terms and conditions of this Master Agreement, the Parties agree:

**AGREEMENT:**

1. **Term and Termination.** The term of this Master Agreement shall commence on the Effective Date, as set forth above, and shall remain in effect until terminated. This Master Agreement may be terminated by either Party upon thirty (30) days’ written notice, except that any such termination shall not be effective until all payments, deliveries and other obligations of the Parties under this Master Agreement, and any Confirmation Letters executed there under, have been completed.

2. **Definitions.** As used in this Master Agreement, the following terms have the respective meanings set forth below, unless the context otherwise clearly indicates. Other capitalized terms are defined elsewhere in this Master Agreement.

“**Administrator**” means a state or federal administrator, Certification Authority, Governmental Authority or other body with jurisdiction over Certification under, or the transfer or transferability of Environmental Attributes in, any particular Applicable Standard.

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws,

ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the Applicable Standard or any one or both of the Parties or the terms hereof.

**“Applicable Standard”** means a domestic, international or foreign Renewable Portfolio Standard, including a California or Federal Renewable Portfolio Standard, renewable energy, emissions reduction, or Product Reporting Rights program, scheme or organization, adopted by a Governmental Authority or otherwise, other mandatory or voluntary standard or set of rules, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes, as specified in the Confirmation Letter. An Applicable Standard may include any legislation or regulation concerned with renewable energy, oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by an Administrator, or under any present or future domestic, international or foreign RECs, Products, Environmental Attributes or emissions trading program. Applicable Standards do not include legislation providing for production tax credits or other direct third-party subsidies for generation by a Renewable Energy Source.

**“Applicable Tracking System”** means the generation information system, generation attribute tracking system, or other system specified in the Confirmation Letter that records generation from the Renewable Energy Facility in a particular geographic region, such as WREGIS.

**“Attestation Form”** means the Green-e Energy Renewable Attestation From Wholesale Provider of Electricity Or RECs specified in the form set forth in Exhibit B to this Master Agreement, or such other form required under the Applicable Standard, which includes a binding declaration by the Seller, which substantiates the accuracy of the RECs and will provide all information required under the Applicable Standard.

**“Bankrupt”** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

**“Business Day”** means any day, except a Saturday, Sunday, or any day observed as a legal holiday by the City.

**“Buyer”** means the Party purchasing RECs in a REC Transaction governed by this Master Agreement.

**“Certification”** means, if applicable, the certification by the Certification Authority of the Applicable Standard of (i) the creation and characteristics of a REC, (ii) the qualification of a Renewable Energy Facility or a Renewable Energy Source under an Applicable

Standard, (iii) delivery of a REC, or (iv) other compliance with the requirements of an Applicable Standard.

**“Certification Authority”** means an entity that certifies the generation, characteristics or delivery of a REC, or the qualification of a Renewable Energy Facility or Renewable Energy Source under an Applicable Standard, may include, as applicable, the Administrator, Applicable Tracking System, a Governmental Authority, the Verification Provider, one or both of the Parties, an independent auditor, or other third party, and should include (i) if no Applicable Standard is specified, the Seller, or the generator of the RECs if the Seller is not the generator, (ii) if the RECs are to be delivered pursuant to an Applicable Standard, the Administrator of the Applicable Standard, or such other person or entity specified by the Applicable Standard to perform Certification, or (iii) such other person or entity specified by the Parties.

**“Certified Renewable Energy Source”** means any Renewable Energy Source that is recognized under an Applicable Standard as specified by the Parties.

**“Confidential Information”** is defined in Section 12

**“Confirmation Letter”** or **“Confirm”** means the form used by the Parties to effect a REC Transaction in the form of Exhibit A, attached and incorporated by this reference, specifying the terms of such REC Transaction, including the following: (1) any Environmental Attributes not included with Product or Retained by Seller, (2) the quantity to be purchased and sold; (3) the purchase price; (4) the Delivery Deadline; (5) the Applicable Standard; and, (6) if necessary in accordance with the terms of the REC Transaction, (a) the Vintage(s); (b) the Renewable Energy Facility or Facilities from which the Product is to be generated; (c) the Renewable Energy Source and (d) the geography of the Product. The Confirmation Letter constitutes part of, and is subject to, the terms and provisions of this Master Agreement.

**“Costs”** means, with respect to the Non-Defaulting Party, the present value of brokerage fees, commissions, attorneys’ fees, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating or replacing any arrangement pursuant to this Master Agreement; as determined by the Non-Defaulting Party in a commercially reasonable manner.

**“Credit Rating”** means with respect to a Party, on any date of determination, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its issuer rating by the specified rating agency.

**“Defaulting Party”** is defined in Section 6.

**“Delivery Deadline”** means date specified in the Confirmation Letter by which the Seller shall deliver and Buyer shall receive RECs in accordance with an Applicable Standard.

**“Environmental Attribute”** means an aspect, claim, characteristic, or benefit associated with the generation of a quantity of electricity by a Renewable Energy Facility, other

than the Energy produced, and that is capable of being measured, verified or calculated. An Environmental Attribute may include one or more of the following identified with a particular megawatt hour of generation by a Renewable Energy Facility designated prior to Delivery: the Renewable Energy Facility's use of a particular Renewable Energy Source, avoided Nox, Sox, CO2 or greenhouse gas emissions, avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Renewable Energy Facility itself) or as otherwise defined under an Applicable Standard, or as agreed by the Parties. Environmental Attributes do not include production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility.

**“Event of Default”** is defined in Section 6.

**“Force Majeure”** is defined in Section 22.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined by it in a commercially reasonable manner.

**“Governmental Authority”** means any national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

**“Green-e”** means an independent renewable energy certification and verification program, administered by the Center for Resource Solutions, a Section 501(c)3 nonprofit organization based in San Francisco, California.

**“Interest Rate”** means the prime lending rate published under the heading “Money Rates” in the Wall Street Journal.

**“Losses”** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined by it in a commercially reasonable manner.

**“Party” or “Parties”** means City and Counterparty A, individually or collectively, as applicable.

**“Product”** means the RECs to be delivered in a particular Transaction, which may include Environmental Attributes, Verifications, Certifications and other characteristics as specified in a Confirmation Letter.

**“Product Reporting Rights”** means the exclusive right to report sole ownership of the Product to any Certification Authority, Applicable Tracking System, Administrator, Governmental Authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future Applicable Standard.

**“REC Transaction”** means a particular, specific transaction to purchase RECs agreed upon between the Parties as specified in a Confirmation Letter.

**“REC Transaction Date”** means the date specified on the Confirmation Letter.

**“Renewable Energy Certificates” (“REC”** means a certificate, credit, allowance, green tag, Tradable Renewable Certificate (“TRC”) or other transferable document, which is created by an Applicable Standard or a Certification Authority and is associated with the generation of one (1) megawatt hour (“MWh”) of electricity from one or more Renewable Energy Sources by a Renewable Energy Facility. A REC shall include all Environmental Attributes associated with the generation of such electricity, unless specified otherwise in a Confirmation Letter and in accordance with the Applicable Standard, as well as all related Product Reporting Rights, and shall be verified or certified by a Verification Provider or Certification Authority, in accordance with the Applicable Standard. Such Environmental Attributes may be disaggregated and retained, or sold separately, as the Parties agree. A REC is separate from the energy produced and may be separately transferred or conveyed.

**“Renewable Energy Facility”** means an electric generation unit or other facility or installation that produces electric energy using a Renewable Energy Source.

**“Renewable Energy Source”** means an energy source that is not fossil carbon-based, non-renewable or radioactive, and may include solar, wind, biomass, geothermal, landfill, gas, or wave, tidal and thermal ocean technologies.

**“Renewable Portfolio Standard” or “RPS”** means a state or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified persons to be generated from Renewable Energy Sources.

**“Seller”** means the Party selling RECs in a REC Transaction governed by this Master Agreement.

**“Settlement Amount”** means the Losses or Gains, and Costs which the Non-Defaulting Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 7.

**“Terminated Transaction”** is defined in Section 7.

**“Verification Provider”** means an entity that could be an entity other than the Certification Authority, but could also be the Certification Authority, that verifies or audits specified aspects of Products, RECs, or one or more specified Environmental Attributes.

**“Vintage”** means the calendar year, quarter, or other specified period of time in which the energy associated with the REC was generated.

**“WECC”** means Western Electricity Coordinating Council, the western regional council of the North American Electric Reliability Corporation (NERC).

“WREGIS” means the Western Renewable Energy Generation Information System, an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC).

3. **REC Transactions.**

- (a) **Purchase and Sale:** On the terms and subject to the conditions set forth in this Master Agreement, Seller agrees to sell, and Buyer agrees to purchase, all of Seller's rights, title and interest in and to the RECs to be provided on the dates and otherwise as set forth on any Confirmation Letter(s) now, or hereafter, entered into between the Parties (Exhibit A, attached and incorporated by this reference).
- (b) **Delivery Obligations:** As specified in the applicable Confirmation Letter, one of the following delivery obligations (“Delivery Obligation”) shall apply to each Product quantity to be delivered under each REC Transaction:

If the Confirmation Letter provides that the RECs delivery obligation is:

- (i) “Firm” Seller shall deliver the RECs by the Delivery Deadline, and no ground for excuse other than Force Majeure shall apply;
  - (ii) “Unit Contingent” Seller’s obligation to deliver the RECs will be excused to the extent the Renewable Energy Facility is not able to generate Environmental Attributes in the Vintage or other agreed-to time period as specified in the Confirmation Letter, (due to the performance of the Renewable Energy Facility); or
  - (iii) “Project Contingent” Seller’s obligation to deliver the RECs will be excused to the extent the Renewable Energy Facility is not able to generate Environmental Attributes in the Vintage or other agreed-to time period as specified in the Confirmation Letter, due to a delay or failure in constructing or obtaining necessary approvals to construct or modify and operate the new or modified Renewable Energy Facility, or due to reasons as specified in the Confirmation Letter.
- (c) **Right to Sell and Associated Declarations.** With respect to each REC Transaction, Seller hereby represents and warrants to Buyer, upon Delivery for each Product, the following:
    - (i) Seller has exclusive rights to, good and marketable title to, and unencumbered interest in, the Product described in each REC Transaction under Applicable Law; and

- (ii) Seller transfers and sells to Buyer all present and future rights, title, and unencumbered interest of Seller in and to the Environmental Attributes (as discussed in the Confirmation Letter) to the extent Seller will have such rights, title, and interest in and to such RECs under Applicable Law and such transfer and sale to Buyer is not in violation of any Applicable Law at the time of execution of the Confirmation Letter.
- (d) Notwithstanding whether such RECs are transferable to Seller under any Applicable Law, with respect to each REC Transaction upon Delivery for each Product, Seller covenants to Buyer that:
  - (i) Seller has not transferred, and will not transfer, any portion of the rights, title and interest in and to the Product to a third party;
  - (ii) Product will not be sold, marketed, or otherwise claimed by Seller;
  - (iii) Product delivered to Buyer shall be sold by Seller once and only once;
  - (iv) the Environmental Attributes or the electricity that was generated with the attributes were not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, Renewable Portfolio Standard, or other renewable energy mandate; and
  - (v) the electricity that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Seller. Seller shall take such action as may be necessary to transfer and evidence the transfer of RECs to Buyer.
- (e) Confirmation. Unless otherwise agreed in writing, Seller will send Buyer a Confirmation Letter, which may be in substantially the form attached hereto as Exhibit A, or as modified, to describe the specific RECs to be purchased in the REC Transaction. Upon receipt of such Confirmation Letter, the other Party shall promptly return, in the manner described in Section 11, "Notices", a written acceptance thereof, which shall be a signed copy of the Confirmation Letter.
- (f) REC Contract Price. Buyer agrees to buy and Seller agrees to sell each REC at a price in dollars per MWh as set forth in the Confirmation Letter.
- (g) REC Product Quantity. Seller will provide to Buyer RECs in the quantity as set forth in the Confirmation Letter in accordance with the specified Delivery Obligation.

- (h) Monetary Value of REC Transactions. The monetary value of each REC Transaction will be set forth in the Confirmation Letter associated with that Transaction.
- (i) Certification. Seller represents and warrants that it will provide to Buyer RECs that meet or exceed the Applicable Standard as set forth in the Confirmation Letter.
- (j) Reporting.
  - (i) If required under the Applicable Standard, Seller shall be obligated to complete and provide to Buyer a signed copy of the Attestation Form, or City-approved equivalent substitute, no later than the Delivery Deadline, as specified in the Confirmation Letter.
  - (ii) Buyer is not obligated to pay Seller for any RECs which have not been delivered.
- (k) Applicable Tracking System. If specified in the Confirmation Letter, Seller shall deliver to Buyer, and Buyer shall receive, the RECs by the Delivery Deadline via the Applicable Tracking System (or other mechanism provided for in the Confirmation Letter), such as WREGIS, such that all rights, title to and interest in the RECs shall transfer from Seller to Buyer upon such delivery and in accordance with the rules of the Applicable Tracking System.

#### **4. Financial and Performance Assurances.**

- (a) Material Adverse Change. A “Material Adverse Change” occurs with respect to either Party if: reasonable grounds exist to cause a Party to believe that the creditworthiness of the other Party has become unsatisfactory or that a Party’s ability to perform under this Master Agreement has been materially impaired.
- (b) Adequate Assurances. If a Party believes that a Material Adverse Change has occurred, the dissatisfied Party (the “First Party”) may make a written request for the other Party (the “Second Party”) to provide adequate assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the First Party (“Performance Assurance”). The sum total of all Performance Assurance that the First Party may request from the Second Party under this Master Agreement shall not exceed the value of the Termination Payment that would be owed to the First Party had an Early Termination Date occurred on the date of such request. Acceptable Performance Assurance includes cash, an irrevocable standby letter of credit, a prepayment or such other acceptable security acceptable to the First Party,

in its sole discretion. Upon receipt of the request to provide adequate assurance, the Second Party shall have five (5) Business Days to provide such Performance Assurance before an Event of Default under Section 6 of this Master Agreement will be deemed to have occurred and the First Party will be entitled to the remedies set forth in Section 7. If the Second Party provides such Performance Assurance to the First Party within five (5) Business Days, it is understood that the Second Party shall not in fact have defaulted under this Master Agreement by incurring a Material Adverse Change.

**5. Billing and Terms of Payment.**

- (a) Billing. Upon each delivery of RECs, Seller shall provide an invoice to Buyer in the amount applicable to each REC Transaction executed under the Confirmation Letter.
- (b) Terms of Payment. The terms of payment shall be net thirty (30) days after the date Buyer receives a properly prepared and accurate invoice sent to the Buyer's address, which shall include at a minimum:
  - (1) Seller's complete name and address where payment is to be remitted;
  - (2) Buyer's complete name and address where bill is to be sent;
  - (3) Price and billing units consistent with the Confirmation Letter(s) executed by the Parties;
  - (4) quantity;
  - (5) Attestation, if required, will be delivered with invoice;
  - (6) invoice date;
  - (7) total monetary amount;
  - (8) terms of payment, including any applicable discount calculations;
  - (9) tax amount/rate information, if applicable.
- (c) Payment may be made by check or wire transfer. Payment by check shall be considered made when received by Seller.

City agrees to send its payment to:

Address: 437 Madison Avenue, Suite 17A, New York, NY 10022  
Attention: Operations

Wiring instructions:  
Account name: ACT Commodities Inc.  
Account Number: 00379268  
Bank Name: Deutsche Bank Trust Company Americas  
ABA#: 021-00-1033  
Bank Address: 60 WALL STREET 15TH FL  
Bank City and State: NEW YORK, NY 10005

Counterparty A agrees to send its payment to:

Address: 250 Hamilton Ave., Palo Alto, CA 94301

Attention: \_\_\_\_\_

Wiring instructions:

- (d) Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5(d) within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a REC Transaction occurred, the right to payment for such performance is waived.

## 6. Events of Default.

A Party is in default (“**Default**”) hereunder if that Party (the “**Defaulting Party**”) does any of the following (each an “**Event of Default**”):

- (a) the failure of the Buyer to make any payment required pursuant to this Master Agreement, if such failure is not remedied within fifteen (15) Business Days after written notice, provided that if the Buyer, in good faith, disputes all or any portion of the payment, the Buyer shall pay only that portion of the payment that it does not dispute;
- (b) the failure of the Seller to deliver RECs when due pursuant to this Master Agreement, if such failure is not remedied within five (5) Business Days after written notice to the affected Party;
- (c) any representation or warranty provided by either Party herein that shall prove to have been false or misleading in any material respect when made or repeated;

- (d) the failure by a Party to perform any covenant or agreement set forth in this Master Agreement and applicable Confirmation Letters and incorporated exhibits (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within fifteen (15) Business Days after written notice thereof to the affected Party;
- (e) the Party becomes Bankrupt; or
- (f) the failure by a Party to provide timely and satisfactory financial and/or performance assurance when requested to do so under the terms of this Master Agreement, and such failure is not cured within five (5) Business Days after written notice thereof to the affected Party.

**7. Remedies for Default.**

- (a) Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the “Non-Defaulting Party”) will have the right to do any or all of the following:
  - (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, REC Transactions (each referred to as a “Terminated Transaction”) between the Parties;
  - (ii) withhold any payments due to the Defaulting Party under this Master Agreement; and
  - (iii) suspend performance.
- (b) Calculation of Settlement Amounts. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date by aggregating its Gains, Losses and Costs with respect to each such Terminated Transaction (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable). If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Master Agreement, the

settlement amount shall be zero, notwithstanding any provision of this Master Agreement to the contrary.

- (c) Net Out of Settlement Amounts. The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out the following:
- (i) all amounts that are due to the Defaulting Party, if the Defaulting Party is Seller, for RECs that have been delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Defaulting Party under this Master Agreement; against
  - (ii) all Settlement Amounts that are due to the Non-Defaulting Party under this Master Agreement, so that all such amounts will be netted out to a single liquidated amount (the “Termination Payment”) payable by the Non-Defaulting Party.

The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within five (5) Business Days following notice.

- (d) Calculation Disputes. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.
- (e) Limitation on Damages. The Defaulting Party’s liability will be limited to direct, actual damages, and Costs only, and such direct, actual damages, and Costs will be the sole and exclusive remedy hereunder. In no event will either Party be liable to the other under this Master Agreement for any consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise pursuant to this Section 7, except for any claims indemnified pursuant to Section 8.
- (f) Exclusive Remedy. THE REMEDIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO THE NONDEFAULTING PARTY IN THE EVENT OF A PARTY’S DEFAULT WITH RESPECT TO ITS OBLIGATIONS TO SELL OR PURCHASE RECS, AND A PARTY’S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS SECTION. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE RECS AT LAW ARE HEREBY WAIVED.

## **8. Indemnification.**

- (a) Indemnification of City: To the fullest extent permitted by Applicable Law, Counterparty A agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Counterparty A's acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by Counterparty A pursuant to this Master Agreement and subsequent REC Transactions and related Confirmation Letters, except for claims, liabilities and damages caused by the City's sole negligence or willful misconduct.
- (b) Indemnification of Counterparty A: To the fullest extent permitted by Applicable Law, City agrees to protect, defend, hold harmless and indemnify Counterparty A, its board of directors, officers, employees and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Counterparty A shall become liable arising from City's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by City pursuant to this Master Agreement and subsequent and related Confirmation Letters, except for claims, liabilities and damages caused by the Counterparty A's comparative negligence or willful misconduct.

**9. Relationship of the Parties.**

The relationship of the Parties under this Master Agreement is that of independent contractors. The Parties specifically state their intention that this Master Agreement is not intended to create a partnership or any other co-owned enterprise unless specifically agreed to by the Parties in a separate written instrument. Except as specifically provided herein, each Party shall continue to have the right to contract independent of the other Party with individuals and entities. Each Party shall be responsible for its own operating expenses and personnel expenses.

**10. Taxes and Costs.**

Unless otherwise specified in the applicable Confirmation Letter (and to the extent not included in the purchase price), each Party shall bear the cost of any taxes imposed on such Party in relation to or arising out of such REC Transaction. Each Party shall be liable for all costs, fees, commissions or other payments due to brokers, agents or other intermediaries incurred by such Party (and shall indemnify and hold the other Party harmless from and against all such amounts) in connection with the drafting, consummation or performance of this Master Agreement or any REC Transaction hereunder.

**11. Notices.**

All notices required or permitted to be given hereunder in writing shall, unless expressly provided otherwise, be in writing, properly addressed, postage pre-paid and delivered by hand, facsimile, certified or registered mail, courier or electronic messaging system to the appropriate address as either Party may designate from time to time by providing notice thereof to the other Party.

If to City:

Address: 250 Hamilton Ave.  
Palo Alto, CA 94301  
Attention: City Clerk  
Phone: (650) 329-2571  
Fax: (650) 328-3631

If to Counterparty A:

Address: 437 Madison Avenue, Suite 17A  
New York, NY 10088  
Attention: Operations  
Phone: (212) 803-1500  
Fax:

With a copy to:

Address: 250 Hamilton Ave.  
Palo Alto, CA 94301  
Attention: Director of Utilities  
Phone: (650) 329-2277  
Fax: (650) 329-2154

Notices delivered by facsimile or by an electronic messaging system shall require confirmation through a reply facsimile or electronic message.

**12. Confidential Information.**

- (a) “Confidential Information” shall mean and include information consisting of documents and materials of a disclosing Party and/or any other technical, financial or business information of or about a disclosing Party which is not available to the general public, as well as all information derived from such information, which is furnished or made available to the other Party and is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information.”
- (b) The disclosing Party is the Party to whom the Confidential Information originally belongs and who shall, after appropriate notice from the receiving Party, bear the burden of pursuing any legal remedies to retain the confidential status of the Confidential Information, as set forth in Section 12(e), below.
- (c) Confidential Information disclosed by either Party to the other shall be held by the receiving Party in confidence, and shall not be:
  - (i) used by the recipient to the detriment of the disclosing Party; or

- (ii) made available for third parties to use.
- (d) Each Party will direct its employees, contractors, consultants and representatives who have access to any Confidential Information to comply with all the terms of this Section. Information received by the receiving Party shall not be Confidential Information if:
  - (i) it is or becomes available to the public through no wrongful act of the receiving Party;
  - (ii) it is already in the possession of the receiving Party and not subject to any confidentially agreement between the Parties;
  - (iii) it is received from a third party without restriction for the benefit of the disclosing Party and without breach of this Master Agreement;
  - (iv) it is independently developed by the receiving Party; or
  - (v) it is disclosed pursuant to a requirement of law or a duly empowered government agency or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to the disclosing Party, unless such notice is prohibited.
- (e) Counterparty A acknowledges that City is a public agency and is subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Counterparty A may submit Confidential Information to City pursuant to Section 12(a), above and City will maintain such identified documents as confidential to the fullest extent allowed by law. However, upon request or demand from any third person or entity not a party to this Master Agreement (“Requestor”) for production, inspection and/or copying of information designated by a disclosing Party as Confidential Information, the receiving Party shall notify the disclosing Party that such request has been made in accordance with Section 11 of this Master Agreement. Upon receipt of this notice, the disclosing Party shall be solely responsible for taking whatever legal steps may be necessary to protect the information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the receiving Party. If within ten (10) days after receiving the foregoing notice from the receiving Party, the disclosing Party takes no such action, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.
- (f) Upon termination or expiration of this Master Agreement, the receiving Party shall, at the disclosing Party’s direction, either return or destroy all of the disclosing Party’s Confidential Information and so certify in writing. The obligations of this provision will survive for one (1) year after any termination or expiration of this Master Agreement.

**13. Publicity and Disclosure.**

Counterparty A shall not use the name, trade name, trademarks, service marks of or owned by City, or logos of City, or share Confidential Information in any publicity releases, news releases, annual reports, product packaging, signage, stationery, print literature, advertising, websites or other media without securing the prior written approval of City. Counterparty A shall not, without prior written consent of City, represent, directly or indirectly, that any product or service offered by Counterparty A has been approved or endorsed by City. Counterparty A agrees that City may make oral and written reports and other communications regarding this Master Agreement and subsequent REC Transactions to the Palo Alto City Manager, City Council and other public officials as required by law, which reports and communications will be public reports and communications.

**14. Nondiscrimination.**

As set forth in Palo Alto Municipal Code section 2.30.510, Counterparty A agrees that in the performance of this Master Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Counterparty A acknowledges that it has read and understands the provisions of Chapter 2.30 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Chapter 2.30 pertaining to nondiscrimination in employment, including completing the - form furnished by City and set forth in Exhibit C.

**15. Miscellaneous Representations and Warranties.**

- (a) Each Party represents and warrants that the execution and performance of this Master Agreement and subsequent REC Transactions will not conflict with or result in a breach of any other agreement to which it is a party.
- (b) Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of a state of the United States of America.
- (c) Each Party represents and warrants that it has full power and authority to make, execute, deliver and perform this Master Agreement and subsequent REC Transactions.
- (d) Each Party represents and warrants that it will abide by the Applicable Program as specified in each Confirmation Letter.
- (e) Each Party represents and warrants that it will abide by the Green-e Standard v. 1.5 or as amended when applicable.

**16. Choice of Law.**

The laws of the State of California shall be applied and be controlling for all purposes and all matters relating to the Master Agreement. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

**17. Entire Agreement.**

This Master Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, whether oral or written, of the Parties.

**18. Amendments.**

Except to the extent herein provided, no amendment, supplement, modification, termination or waiver of this Master Agreement shall be enforceable unless executed in writing by the Party to be bound thereby.

**19. Assignment.**

This Master Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Master Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld.

**20 Non-Waiver; No Third Party Beneficiaries.**

No waiver by any Party of any of its rights with respect to the other Party or with respect to this Master Agreement or any matter or default arising in connection with this Master Agreement, shall be construed as a waiver of any other right, matter or default. Any waiver shall be in writing signed by the waiving Party. No payment, partial payment, acceptance or partial acceptance by City will operate as a waiver on the part of the City of any of its rights under the Master Agreement. This Master Agreement and subsequent Confirmation Letters related to REC Transaction are made and entered into for the sole benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, have any rights under, or have any direct or indirect cause of action or claim in connection with this Master Agreement.

**21. Severability.**

In the event that any provision of the Master Agreement is found to be void or unenforceable, such findings shall not be construed to render any other provision of the Master Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

**22. Force Majeure.**

Neither Party shall be liable in any respect for failure or delay in the fulfillment or performance of REC Transactions under this Master Agreement, if performance is hindered or prevented, directly or indirectly by an event beyond the reasonable control of either Party, including, without limitation, war, public emergency or calamity, fire, earthquake, Acts of God, strikes, labor disturbance or actions, civil disturbances or riots, litigation brought by third parties against the Parties, or any act of a superior governmental authority or court order. Force Majeure may not be based on (i) Seller's ability to sell RECs to another at a price greater than the purchase price specified in the Confirmation Letter, (ii) Buyer's inability economically to use or resell the RECs, or (iii) Buyer's ability to purchase RECs at a price less than the purchase price specified in the Confirmation Letter.

**23. Exhibits and Insurance.**

The exhibits attached hereto are incorporated into this Master Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Master Agreement and the Confirmation Letter, the terms of the Confirmation Letter shall prevail. During the term of this Master Agreement, Counterparty A shall maintain the insurance levels set forth on Exhibit D.

**24. Compliance with Law.**

Each Party will comply with all lawful federal, state and local law, ordinances, resolutions, rate schedules, rules and regulations that may affect its rights and obligations under the Master Agreement.

**25. Fiscal Provisions.**

The REC Transactions under this Master Agreement are subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. The Master Agreement and all related Confirmation Letters and Agreements will terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal years and funds for the City's obligations are no longer made available. This provision will take precedence in the event of a conflict with any other term or condition of the Master Agreement.

IN WITNESS WHEREOF, each of the Parties hereto acknowledge that they have read the terms and conditions contained herein, understand and agree to the same and agree to be bound thereby and have caused this Master Agreement to be executed in duplicate originals by its duly authorized representative on the respective dates entered below.

**CITY OF PALO ALTO  
("CITY")**

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

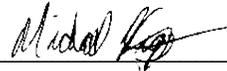
\_\_\_\_\_  
Senior Deputy City Attorney

APPROVED:

\_\_\_\_\_  
Director of Administrative  
Services

\_\_\_\_\_  
Director of Utilities

**ACT Commodities Inc  
("Counterparty A")**

By:  \_\_\_\_\_

Name: Michael Vigario

Title: Head of Finance

Taxpayer Identification No.

47-1704510

## Exhibit A

### Confirmation Letter #1

The following describes a REC Transaction between City and Counterparty A for the sale, purchase and delivery of Renewable Energy Certificates (“**RECs**”) pursuant to the terms of the REC Master Agreement between the City of Palo Alto and Counterparty A dated \_\_\_\_\_, 20\_\_.

Initially capitalized terms used and not otherwise defined herein are defined in the Master Agreement.

#### **Basic Commercial Terms:**

REC Transaction Date:	
REC Transaction Reference:	
Seller:	
Buyer:	
Renewable Resource Facility:	
Renewable Energy Source:	
Geography:	
Vintage(s):	
REC Product Quantity (MWh):	
REC Contract Price (\$/MWh):	
Monetary Value of REC Transaction (\$):	
Delivery Deadline:	

#### **Product Specific Terms:**

Applicable Standard:	
Environmental Attributes retained by Seller, if any:	
Applicable Tracking System:	
Attestation Form Required [yes, no]	
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	

This Confirmation Letter is executed pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement.

The Parties agree to the REC Transaction set forth herein.

<b>XXXX (“Buyer”)</b>	<b>XXXX (“Seller”)</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

**Exhibit B**  
**Certification of Nondiscrimination**

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not and will not during the course of this contract discriminate in the employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person and that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

**THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S)  
BELOW.**

Authorized Signature: 

Date: 09/17/2019

**EXHIBIT C  
INSURANCE REQUIREMENTS**

Counterparty A shall maintain the level of insurance set forth below:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
  
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**