

REDACTED

**AMENDED AND RESTATED
GENERATION INFORMATION SYSTEM
ADMINISTRATION AGREEMENT**

BETWEEN

NEW ENGLAND POWER POOL

AND

APX, INC.

Dated as of October 1, 2017

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**AMENDED AND RESTATED
GENERATION INFORMATION SYSTEM
ADMINISTRATION AGREEMENT**

This Amended and Restated Generation Information System Administration Agreement (this “**Agreement**”) is entered into as of October 1, 2017 (the “**Effective Date**”), by and between the entities that are Participants from time to time in the New England Power Pool, a voluntary association, pursuant to the Restated New England Power Pool Agreement dated as of September 1, 1971, as amended and restated to date and as further amended and/or restated from time to time, acting herein by and through the New England Power Pool Participants Committee (“**NEPOOL**”), and APX, Inc. (f/k/a Automated Power Exchange, Inc.), a California corporation (“**APX**” and together with NEPOOL, the “**Parties**”). ISO New England Inc. (“**ISO**”) joins this Agreement solely for purposes of acknowledging certain billing and payment provisions noted below.

WHEREAS, NEPOOL, APX and the ISO entered into that certain Generation Information System Development and Administration Agreement dated as of October 26, 2001, as extended and amended by the Extension of and First Amendment to Generation Information System Development and Administration Agreement dated as of July 17, 2006, the Extension of and Second Amendment to Generation Information System Development and Administration Agreement dated as of December 9, 2011, and the Third Amendment to Generation Information System Development and Administration Agreement dated and effective as of July 1, 2016 (the “**Original GIS Agreement**”); and

WHEREAS, NEPOOL, APX and the ISO wish to amend and restate the Original GIS Agreement in order to extend the term thereof and to reflect additional agreements among them, as provided in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend and restate the Original GIS Agreement in its entirety as follows:

ARTICLE I: CERTAIN DEFINITIONS

This Article sets forth the definitions of certain terms used herein; other terms are defined in this Agreement and its Exhibits. Terms shall have the meanings set forth where used in this Agreement and identified with initial capital letters.

“**AAA**” has the meaning specified in Section 11.1 hereof

“**Affiliate**” means, when used in reference to a Person, a Person which controls, is controlled by, or is under common control with such Person. As used in the preceding sentence, “control” means possession, directly or indirectly, of the power to direct the management or policies of a Person. A voting interest of ten percent (10%) or more creates a rebuttable presumption of control.

“**Agreement**” has the meaning specified in the first paragraph hereof.

“**API**” means the application programming interface, made up of multiple endpoints, accessible by GIS account holders to access the GIS.

“**APX**” has the meaning specified in the first paragraph hereof.

“**Attribute Laws**” are those statutes, regulations and orders and decisions of courts and governmental agencies in effect from time to time within the Control Area requiring (a) the disclosure of the fuel source, emissions and/or other attributes of the generation used in providing electric service to retail customers, (b) the inclusion of specified amounts of generation with particular attributes in the generation used in providing electric service to retail customers, and/or (c) that generation falling within specified emission limits be used to serve retail customers.

“**Base Enhancement Hours**” has the meaning specified in Section 4.8 hereof.

“**Certificate**” means the electronic document that identifies the relevant attributes of each MWh that is accounted for in the GIS.

“**Committee**” means the NEPOOL GIS Operating Rules Working Group and any successor thereto.

“**Confidential Information**” means all information, technical data or know-how which relates to the business processes, services or products of either Party or either Party’s vendors or consultants, including, without limitation, any research, products, services, developments, intentions, processes, techniques, designs, scientific, technical, engineering, distribution, marketing, financial, merchandising and sales information, which is disclosed under this Agreement on or after the date hereof, to the other party, directly or indirectly, in writing, orally or by drawings or inspection that is identified as confidential or proprietary by the Disclosure Party. Confidential Information shall include any Confidential Information as defined under the ISO Information Policy from time to time. Without limitation, for purposes of this Agreement, the User Data shall be deemed to be the Confidential Information of NEPOOL.

“**Contract Year**” means the period beginning on the Effective Date and ending on December 31, 2018, and each one-year period thereafter.

“**Control Area**” means the geographic area, as of the effective date of this Agreement, in which the generation and transmission systems controlled by the ISO are located.

“**Disclosing Party**” has the meaning specified in Section 8.1 hereof.

“**Disputed Amounts**” has the meaning specified in Section 7.2 hereof.

“**Documentation**” means the Software user and administrator guides and any modifications thereto developed under this Agreement, and all specifications for and configurations of the Software, Interfaces and Equipment, together with any other materials in any form with respect thereto, plus all modifications thereto during the term of this Agreement, as such modifications

“**Interfaces**” means the APX-designed interfaces with the ISO’s market settlement system and with the users of the GIS or any other source of data or communication between the GIS and a third party approved by APX and NEPOOL.

“**ISO**” means ISO New England Inc. and any successor thereto as the independent system operator solely for the Control Area. New York Independent System Operator and PJM Interconnection do not qualify as successors to ISO New England Inc. for the purposes of this Agreement for operations outside of the Control Area.

“**ISO Information Policy**” means the policy, a copy of which is available at <https://www.iso-ne.com>, established by the ISO setting forth rules and guidelines regarding disclosure of information received, created and distributed in connection with the operation of and participation in the markets administered by the ISO, as the same may be amended, modified or restated from time to time.

“**Material Default**” has the meaning specified in Section 5.1 hereof.

“**MWh**” means a megawatt-hour of electricity.

“**NEPOOL**” has the meaning specified in the first paragraph hereof.

“**NPC**” means the NEPOOL Participants Committee and any successor thereto.

“**Participants**” means the NEPOOL participants from time to time.

“**Parties**” has the meaning specified in the first paragraph hereof.

“**Person**” or “**Persons**” means any natural person, partnership, joint enterprise, corporation, or any other business organization or legal entity.

“**Receiving Party**” has the meaning specified in Section 8.1 hereof.

“**Service Level Agreement**” means the specifications, requirements and commitments set forth in Exhibit A hereto.

“**Services**” means APX’s tasks and services to administer, operate, maintain, host, enhance and repair the GIS, to perform certain related administrative work for the GIS and to perform certain other duties, all as specifically set forth in this Agreement.

“**Software**” means the computer applications relating to the GIS. For purposes of this Agreement, the Software includes Enhancements, repairs, corrections, fixes, improvements, modifications, configurations, refinements, upgrades or updates thereto and related Documentation developed by APX.

“**Source Code**” means the human-readable form of a computer instruction including, but not limited to, related system documentation, all comments and any procedural code such as job control language.

“User Data” means all data that GIS account holders, the ISO, governmental agencies and other Persons (not including APX and its employees, subcontractors, vendors or suppliers or the employees of any such parties) have provided to the GIS, including, without limitation, account information, generating unit and generation information, load information and Certificate trading data.

ARTICLE II: ENGAGEMENT OF APX

2.1 Engagement of APX.

NEPOOL hereby engages APX as an independent contractor to perform the Services in accordance the terms and conditions hereof, the Functional Requirements and the GIS Operating Rules. APX accepts such engagement and agrees to perform the Services in accordance with such terms and conditions.

2.2 Relationship.

APX shall act as an independent contractor of NEPOOL with respect to the performance of its obligations hereunder. Neither of the Parties nor their Affiliates, employees, subcontractors, vendors or suppliers or the employees of any such parties employed in connection with this Agreement shall be deemed to be agents, representatives, employees, or servants of the other. The Parties shall not have the right or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of the other. This Agreement is not intended to create, and shall not be construed to create, a relationship of partnership or an association of profit between NEPOOL and APX. Nothing in this Agreement is intended to create a partnership, joint venture or other joint legal entity making either Party jointly or severally liable for the acts or omissions of the other Party.

2.3 Engagement of Third Parties.

APX shall not assign any of its obligations under this Agreement to any third party without NEPOOL’s prior written consent; provided, that such consent shall not be unreasonably withheld, conditioned or delayed, moreover, that no such assignment shall relieve APX of any of its obligations or liabilities under this Agreement, including without limitation those set forth in ARTICLE IV: hereof. As between NEPOOL and APX, APX shall be solely responsible for the acts or defaults of APX’s permitted subcontractors and their agents, representatives and employees. Nothing in this Agreement shall be construed to impose on NEPOOL any obligation, liability or duty to a subcontractor engaged pursuant to this subsection, or to create any contractual relationship between such subcontractor and NEPOOL. NEPOOL hereby consents to APX’s use of Sabal Tech Inc., a Florida corporation having a place of business at 1217 S.E. 13th Terrace, Fort Lauderdale FL 33316, including Sabal’s use of overseas support and subcontractors.

2.4 Scope

This contract pertains to the administration of an energy attribute tracking system for energy generated within, or imported into, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

ARTICLE III: TERM AND TERMINATION

3.1 Term.

The initial term of this Agreement shall commence on the Effective Date and will continue until December 31, 2020, unless terminated earlier by NEPOOL or APX in accordance with the terms of this Agreement. The term of this Agreement shall automatically be extended for additional one year terms on mutually agreed fee-for-service terms unless either Party provides the other Party with a written notice of its intention not to renew this Agreement at least ninety (90) days prior to the expiration of the initial term or any renewal term hereof.

3.2 Termination.

(a) This Agreement may be terminated by NEPOOL without cause at any time upon ninety (90) days written notice to APX. If this Agreement is terminated by NEPOOL pursuant to this Section 3.2(a), NEPOOL shall pay a one-time termination fee of \$[REDACTED]. In addition, APX shall be entitled to receive payment for any unpaid charges due hereunder for the Services provided by it from the Effective Date through the date of such termination, plus any additional amounts that are due to APX under Section 3.3.

(b) In addition to any other rights that NEPOOL may have in law or equity, this Agreement may be terminated by NEPOOL upon written notice in the event that (i) APX commits a Material Default, and (ii) the time for cure of such Material Default as provided by Section 5.3 below has expired without a cure. If this Agreement is terminated by NEPOOL pursuant to this Section 3.2(b), APX shall be entitled to receive payment for any unpaid charges due hereunder for the Services provided by it from the Effective Date through the date of such termination, plus any additional amounts that are due to APX under Section 3.3.

(c) APX may terminate this Agreement prior to the expiration of the term hereof in the event that (i) NEPOOL commits a Material Default, and (ii) the time for cure of such Material Default as provided by Section 5.3 below has expired without a cure. In the event of such a termination for a Material Default by NEPOOL, APX shall be entitled to receive payment for any unpaid charges due hereunder for the Services provided by it from the Effective Date through the date of such termination plus payment by NEPOOL of a one-time termination fee of \$[REDACTED], plus any additional amounts that are due to APX under Section 3.3.

3.3 Transition Upon Termination [REDACTED].

In the event that NEPOOL opts to transition development and administration of the GIS to the ISO or another party upon the expiration or earlier termination of this Agreement and [REDACTED], APX will provide transition services to the new administrator including, without limitation, support for and coordination of data migration (including without limitation all User Data). APX will work with the new administrator to provide migration of all historical GIS data to the new administrator and/or platform in agreed upon flat text file formats. For a period requested by NEPOOL, not to exceed four (4) months following the expiration or earlier termination of this Agreement (running concurrently with the provision of other transition services described in this Section 3.3), APX shall maintain the GIS in an operable and customer-

accessible state such that GIS account holders may view and request reports of any of their GIS production data as it existed at the cutover date to the new administrator and/or platform. The transition services shall commence reasonably in advance of the expiration or earlier termination of the Agreement, and shall continue for a period after the expiration or earlier termination of the Agreement as reasonably requested by NEPOOL and in no case to exceed four (4) months after such expiration or termination. APX will be paid on a time and materials basis for all such transition services, based on its standard billing rates of \$ [REDACTED] unless otherwise stated herein or otherwise agreed in writing by the Parties, and APX will be paid the fees provided under ARTICLE VII during such time as it maintains the GIS in an operable and customer-accessible state after the expiration or termination of this Agreement.

3.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.5 Survival.

ARTICLE I (Certain Definitions), and Sections 3.3 (Transition Upon Termination), 6.1 (Rights in Property), 8.1 (Precautions Taken to Protect Confidential Information), 9.1 (Limitation of Liability), 9.4 (Indemnity), 12.3 (Warranty Disclaimer) of this Agreement will survive and remain in effect upon the termination of this Agreement until all obligations thereunder are satisfied.

ARTICLE IV: DUTIES OF APX

4.1 Description of Duties.

APX shall operate, administer, maintain, host and enhance the GIS in accordance with this Agreement, the Functional Requirements, the Service Level Agreement set forth in Exhibit B hereto, the GIS Operating Rules, and the following, and any other duties reasonably incident to the performance of the Services:

(a) Operate, administer, maintain, host and enhance the GIS database with a flexible and open architecture capable of expansion to handle additional information, data fields and interfaces that might be added later due to changes in participating Persons, Attribute Laws, evolving market requirements and/or the combination of power pools and regional transmission organizations in the northeastern United States;

(b) Document generation and associated attributes of each participating generator or importing system based on information provided by that generator, the ISO or governmental agencies, and produce Certificates based on that information and provide for database access to necessary information by the Persons participating in the GIS;

(c) Catalog the initial assignment of each Certificate based on information provided by the ISO and participating generators;

- (d) Monitor and document all Certificate exchanges from and between all participating Persons based on information provided by those Persons to APX;
- (e) Prepare monthly reports, with quarterly and annual digests of those reports, for each Person participating in the GIS for each account in the GIS database, which reports will summarize the Certificates held by such Person as of the date of such report;
- (f) Provide electronically to participating Persons the current status of their GIS accounts upon request;
- (g) Cooperate with state agencies in the verification of compliance filings under Attribute Laws, consistent with the provisions hereof and of the ISO Information Policy;
- (h) As specified in Section 4.8 hereof, modify the GIS to conform with changes in the GIS Operating Rules and Attribute Laws from time to time, but no more frequently than semi-annually for modifications that are not of an emergency nature;
- (i) Coordinate the development and operation of all Equipment;
- (j) Perform all scheduled and unscheduled maintenance, including periodic operational checks and tests and regular preventive maintenance, backups and disaster recovery processes, required on all Equipment, as recommended by the vendor or manufacturer thereof, and in accordance with industry best practices;
- (k) Employ, train, maintain, administer and supervise a work force necessary to perform APX's obligations under this Agreement;
- (l) Employ current versions of all Software, updating the Software as necessary to make the GIS as efficient as practicable and as required under this Agreement;
- (m) Conduct periodic, and at least annual, reviews of the GIS Operating Rules with respect to the GIS and recommend revisions to NEPOOL as necessary;
- (n) Maintain databases and records generated by APX and/or supplied to APX by NEPOOL or any third party in connection with the GIS; and
- (o) At the request of NEPOOL, provide public relations services with respect to the GIS.

4.2 Compliance with GIS Operating Rules and Code of Conduct.

APX will administer, operate, maintain, host and enhance the GIS in accordance with the GIS Operating Rules. From time to time, APX may propose new GIS Operating Rules, or amendments to existing GIS Operating Rules, to the Committee or another group or Person designated by NEPOOL, as APX deems appropriate. APX shall not, however, be permitted to vote on the adoption of any GIS Operating Rule or amendment thereto. Notwithstanding the foregoing, APX shall not be required to comply with any GIS Operating Rule that it determines in its reasonable discretion would have a material adverse effect on the GIS or which is not

consistent with the provisions of this Agreement, provided that it promptly notifies NEPOOL of that determination and its reasons therefor. APX shall have the sole responsibility for the compilation, indexing, reasonable interpretation and implementation of the GIS Operating Rules.

4.3 Staffing.

APX shall maintain the staffing levels needed to perform the Services with personnel who possess the training, education, experience and skill levels appropriate for the Services to be provided by such personnel, consistent with the terms of this Agreement.

4.4 Method of Performing Services.

Subject to the terms hereof, APX shall have the right to determine the method, details, and means of performing the Services hereunder. NEPOOL shall be entitled to monitor the performance and results of APX's personnel and permitted subcontractors to assure satisfactory performance, including the right to inspect, the right to make suggestions or recommendations as to the details of the GIS, and the right to propose modifications to the way in which APX performs its obligations hereunder.

4.5 Place of Work, Hosting.

(a) APX's personnel will predominantly perform the Services under this Agreement from APX's facilities within the United States, with the noted exception that the approved 3rd party contractor Sable Tech Inc. and their subcontractors conduct much of its work overseas.

(b) APX registries are hosted across multiple geographical regions of Microsoft Azure, which provides Class A data center space in various locations of the United States. APX will be responsible for costs associated with Microsoft Azure and APX cloud computing.

4.6 Upgrades Available to Other Tracking Systems.

APX shall promptly notify NEPOOL of any functionality upgrades that APX implements to any of the other generation or renewable energy credit tracking registry products or services that APX administers or offers in the United States that might reasonably be applicable to the GIS. Such notice shall include an estimate of the cost to NEPOOL to make a similar upgrade to the GIS. To the extent that NEPOOL requests that any such upgrade be made to the GIS as well, the cost of such upgrade would be calculated, charged and paid in accordance with Section 4.8 below.

4.7 Certain Enhancements to GIS.

On or prior to March 31, 2018, APX shall implement the following Enhancements to the GIS at no charge to NEPOOL:

(a) Update the GIS software framework to provide more efficient access to data and improved search capability;

(b) Provide the ability to batch-transfer Certificates over multiple pages of Certificates;

(c) Create the capability to convert renewable energy certificates from the New York Generation Attribute Tracking System (NYGATS) to Certificates and to convert Certificates to NYGATS renewable energy certificates, in each case assuring that the NYGATS renewable energy certificate or Certificate in the originating system is permanently retired; and

(d) Provide a standard test “sandbox” version of the GIS in which GIS account holders can test programs or code that interact with the GIS.

4.8 Ongoing Enhancements to GIS.

During the term of this Agreement, at no charge to NEPOOL, APX shall provide up to two-hundred (200) hours of development work each Contract Year (the “**Base Enhancement Hours**”) for Enhancements to the GIS. Any Enhancements to the GIS requiring development hours in excess of the Base Enhancement Hours shall be (i) agreed upon in advance by NEPOOL and APX, and (ii) billed by APX to NEPOOL on a time-and-materials basis at APX’s standard rates, which are \$ [REDACTED] unless stated herein or otherwise agreed in writing by the Parties and with materials charged at APX’s actual out-of-pocket cost therefor. For purposes of clarification, the time that APX personnel spend implementing the enhancements to the GIS set forth above in Section 4.7 shall not be included in the Base Enhancement Hours. APX shall reasonably track the use of the Base Enhancement Hours, and provide a written report to NEPOOL at the end of each Contract Year setting forth the number of Base Enhancement Hours used that year and how they were used. If NEPOOL uses less than the full amount of Base Enhancement Hours available in a given Contract Year, the remaining Base Enhancement Hours shall not roll over, with the exception of a maximum of 20 hours that will be allowed to roll over each Contract Year and be available to NEPOOL in the next Contract Year, in addition to the Base Enhancement Hours for such second Contract Year and any subsequent Contract Year, if applicable.

APX shall, from time to time, suggest Enhancements to the GIS based on its own experience and on requests it receives from GIS account holders (including those that are not Participants). APX will provide NEPOOL with a good faith estimate of the cost of each requested or suggested Enhancement to the GIS and a good faith estimate of the implementation date for such Enhancement prior to commencing work on any Enhancement. APX shall implement Enhancements to the GIS upon the direction of NEPOOL.

Before implementing any Enhancement to the GIS under Section 4.6, 4.7 or 4.8, APX shall make the Enhancement available for testing by GIS account holders through a closed “sandbox” for a period of fifteen (15) days. Upon the completion of such testing period, unless the Vice-Chair of the NEPOOL Markets Committee, the Chair of the NEPOOL Participants Committee or NEPOOL counsel provides written notice to APX of a report setting forth any problems or concerns that arose during testing, within five (5) business days of the end of the testing period, NEPOOL shall be deemed to have accepted the proposed Enhancement to the GIS. If the Vice-Chair of the NEPOOL Markets Committee, the Chair of the NEPOOL Participants Committee or NEPOOL counsel provides APX a report listing any errors or concerns regarding a potential enhancement to the GIS, APX shall address and correct such errors or concerns and re-submit the proposed Enhancement for acceptance testing. Any such corrective work shall not be

included in calculating NEPOOL's use of Base Enhancement Hours in any Contract Year or otherwise charged to NEPOOL.

With respect to any alteration of the GIS that would change the structure of the web services API or reports, APX will provide all GIS account holders (a) at least 30 days' advance notice of such alteration and (b) all revised report and web services API definitions, release notes and resources applicable to such alteration.

4.9 Support Services and Training.

APX shall provide an online help center for GIS account holders to self-search for instructions and guidelines on how to use the GIS. APX shall also provide webinars no less than once each Contract Year on GIS fundamentals and new functional enhancements to the GIS. The webinars and trainings will be recorded and promptly made available on the NEPOOL GIS website.

Throughout the term of this Agreement, APX shall provide customer support functions for the GIS, including telephone, electronic mail and an Internet-based Interface on a 24-hour-a-day, 365 (or 366)-day-a-year basis. During normal business hours, such customer support operators will assist Persons participating in the GIS with, among other things, registration into the GIS, establishing GIS accounts and gathering necessary information into their databases. After-hours and holiday support will have the ability to escalate to an appropriate operator in the case of an emergency. The Interface with GIS-participating Persons will include a pull-down help directory. Each GIS account holder shall also have a customer service representative assigned to it who will service its account during normal business hours.

4.10 GIS Usability Group.

During the term of this Agreement, APX shall organize and convene a GIS Usability Group, which shall be comprised of at least one NEPOOL Participant representing each of the following categories: generators in the ISO's settlement market system, distributed generators, Certificate brokers, and load serving entities, each as identified by NEPOOL. APX shall make a good faith effort to also include at least one state regulator staff member in the GIS Usability Group. The GIS Usability Group shall meet no less frequently than once quarterly (i) to review any performance issues with the GIS, (ii) to make suggestions for Enhancements to be considered as part of the GIS Enhancement process, and (iii) to facilitate user acceptance testing of any proposed GIS Enhancements. APX will keep reasonably detailed minutes of each GIS Usability Group meeting and post such minutes on the public portion of the GIS website.

ARTICLE V: DEFAULT

5.1 Default By APX.

For purposes of this Agreement, a material default ("**Material Default**") by APX shall include, but is not limited to, the following conditions:

(a) APX acts in material noncompliance with provisions of this Agreement or fails to act in material compliance with this Agreement; or

(b) Other than an involuntary assignment for the benefit of creditors instituted by a third party and cured within 90 days, proceedings are instituted by or against APX under the U.S. Bankruptcy Code or other insolvency laws or a receiver is appointed for APX for any of its assets or properties; or

(c) APX makes an assignment for the benefit of its creditors or an admission in writing of its inability to pay its debts as they come due; or

(d) A substantial part of APX's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.

5.2 Default By NEPOOL.

For purposes of this Agreement, NEPOOL's failure to pay any undisputed amounts when due, NEPOOL's material breach of its obligations under this Agreement or NEPOOL's repeated failure to render required professional judgments, acceptance, agreement and/or cooperation under this Agreement in a timely way, after APX requests such judgments, acceptance, agreement and/or cooperation in writing, shall constitute a Material Default by NEPOOL. The cessation of the voluntary organization known as NEPOOL, or any non-consensual assignment of NEPOOL's contract rights and/or obligations under this Agreement, in either case without a written assignment to and assumption of all contract obligations hereunder by a successor or assignee pursuant to Section 13.8 shall also constitute a Material Default.

5.3 Notice and Cure.

In the event of a Material Default described above, upon notice from the non-breaching Party, the breaching Party shall immediately commence good faith efforts to effect a cure. The breaching Party shall have ten (10) calendar days from receipt of such notice to cure the Material Default, or, if the Material Default is not of a nature that can be cured within ten (10) calendar days, the breaching Party shall, upon notice to the other Party, have such additional time as is reasonably necessary to complete the cure provided such breaching party commences the cure promptly and pursues it diligently, but in no event more than thirty (30) days from the notice. A notice of Material Default must specify the nature and extent of the Material Default.

ARTICLE VI: OWNERSHIP AND ESCROW OF SOFTWARE; ACCESS TO INFORMATION

6.1 Rights in Property.

Except as expressly set forth in this Agreement, the Parties acknowledge and agree that APX has all right and title in the GIS, including all related Software, Equipment, Interfaces, Enhancements, and Documentation. Notwithstanding the foregoing, the Parties acknowledge and agree that each GIS account holder shall own its respective User Data, including data relating to trades of Certificates, and NEPOOL collectively shall own any User Data not belonging to an individual GIS account holder.

6.2 Escrow.

(a) APX and NEPOOL acknowledge that they have entered into, and agree to maintain for the term of this Agreement, an escrow agreement (the “**Escrow Agreement**”) for the storage and escrow of the Source Code for the Software and Interfaces, Documentation related thereto, and all User Data (collectively, the “**Escrow Materials**”). A copy of the current Escrow Agreement is attached hereto as Exhibit B. NEPOOL and APX may, by mutual written agreement, amend the current Escrow Agreement or enter into a new Escrow Agreement with a different escrow agent. APX represents that, as of the Effective Date, APX has deposited a current version of the Escrow Materials with the escrow agent named in the Escrow Agreement.

(b) APX shall deposit updated versions of the Escrow Materials with the designated escrow agent for each code change included in the GIS production environment. In addition to the foregoing, APX shall, within thirty (30) days of the Effective Date, deposit with the designated escrow agent historical versions of the Escrow Materials, using version control software such as *Git* or substantially similar software, such that a third party software developer could reasonably work from such archived versions of the Escrow Materials.

(c) APX shall permit NEPOOL, at NEPOOL’s sole expense, to perform periodic escrow verifications through the designated escrow agent or another reasonably acceptable third party, to confirm that the Escrow Materials include all User Data and Source Code for the Software and Interfaces needed to operate the GIS. Such escrow verification shall include the option to observe APX running an instance of the Software included in the Escrow Materials (either at APX’s offices or as otherwise mutually agreed) to verify its integrity. In addition, APX shall cooperate with NEPOOL, including without limitation providing to NEPOOL documentation and guidance, as reasonably necessary, in connection with the foregoing audit process.

(d) In addition, NEPOOL may obtain, from the designated escrow agent, the Source Code for the Software and Interfaces, and all Documentation related thereto, in the event that (i) APX enters APX bankruptcy proceedings or, (ii) without offering to assign this Agreement to a successor to a substantial portion of its renewable energy certificate registry business under Section 13.8, APX either dissolves as a corporate entity or ceases to do business as an operator of renewable energy certificate registries. In such event, APX automatically grants NEPOOL a non-revocable, royalty free license for NEPOOL’s then current uses, that shall not be expanded, to use, modify, create derivative works of and operate Source Code for the Software and Interfaces, and all Documentation related thereto exclusively for NEPOOL’s own use, which NEPOOL may share with and transfer to only that Person that will operate the GIS on NEPOOL’s behalf, which Person shall have no rights in such Source Code, Software, Interfaces or Documentation other than solely as needed to operate the GIS for NEPOOL and no other Person.

(e) APX shall be responsible for the payment of all escrow fees (and any other fees) under the Escrow Agreement. In the event APX fails to deposit with the escrow agent named in the Escrow Agreement such Escrow Materials as required in this Agreement, NEPOOL shall be entitled to specific performance of such obligation to so deposit such Escrow Materials with the escrow agent. Except as provided in the Escrow Agreement, the rights and obligations of the parties under this Section 6.2 shall survive any expiration or termination of this Agreement.

(f) Each Party shall execute and deliver such further documents and shall take such further actions as may be reasonably requested from time to time by the other Party to effectuate the purposes of this Section 6.2.

6.3 Third Parties.

Neither APX nor NEPOOL shall be liable to the other for any use or misuse of the GIS by a Person participating in the GIS or any other third party. Each Party shall be free to pursue such remedies as it may be legally entitled to against persons or entities who engage in unpermitted use or misuse of the GIS in contravention of GIS Operating Rules or the Parties' respective intellectual property rights.

6.4 Access to Information.

Subject to the confidentiality provisions hereof and of the ISO Information Policy, at NEPOOL's request, APX shall provide to any Person that operates or administers an exchange through which Certificates may be bought or sold access to the API in use as of the date of this Agreement to access GIS in the form that it exists. In the event that APX operates such an exchange, subject to the confidentiality provisions of this Agreement and of the ISO Information Policy, at NEPOOL's request, APX will provide any other Person operating or administering an exchange the API information in the form that APX is using to operate its own exchange. APX shall not be obligated to do any development work under this section.

6.5 API Access to GIS.

Effective beginning July 1, 2018, APX's Environmental Management Account product, and any other APX product that accesses the GIS through an API, shall access the GIS through the same API that is made available to others under the GIS Operating Rules, and APX shall thereafter use only the API that is made available to GIS account holders for access to the GIS for any purpose other than performance of the Services.

ARTICLE VII: COMPENSATION; PAYMENT

7.1 Fees.

(a) As consideration for the performance of the Services hereunder, NEPOOL shall pay APX the fees as set forth in the Fee Schedule attached hereto as Exhibit C. Any expenses incurred by APX in the performance of its obligations hereunder shall be considered to be included in the amounts paid to it under this Section 7.1, and except for costs incurred under Section 3.3 or 3.4, and charges for Enhancements of the GIS under Section 4.8, APX shall not be entitled to any additional consideration hereunder.

(b) APX shall invoice NEPOOL for fees payable under this Agreement on a monthly basis by submitting an invoice therefor to the ISO, as billing agent for NEPOOL, by the last business day of each calendar month. NEPOOL shall ensure (i) that ISO, as billing agent for NEPOOL, invoices the NEPOOL Participants for such fees in its regular monthly billing cycle and that such fees are paid within thirty (30) calendar days of the ISO's receipt of APX's invoice, (ii) that all such billing and payments shall be in accordance with the ISO Billing Policy

as in effect from time to time, and (iii) that the ISO follows the billing and payment provisions hereof that are applicable to it. Any invoices not paid after thirty (30) days from the date of invoice shall bear an interest rate of twelve percent (12%) per annum pro rata on a simple daily basis, or such lower rate as is the maximum interest rate permitted under applicable law. In the event that the ISO withholds any monies that are in good faith disputed by the ISO or NEPOOL under Section 7.2, APX may not suspend performance of the obligations hereunder until such time as the dispute is resolved in APX's favor and NEPOOL has had a reasonable opportunity to pay such Disputed Amount (as defined below).

7.2 Disputed Amounts.

Any fees due to APX that are in good faith disputed by NEPOOL or the ISO (“**Disputed Amounts**”) shall be placed in escrow with an escrow agent mutually agreed upon by NEPOOL and APX, with both Parties equally sharing the fees to maintain such escrow. Any interest earned on the escrowed monies shall be paid to the prevailing Party. If APX agrees that an error has been made, APX shall make an appropriate adjustment on the next billing. If the matter is not resolved, either Party may initiate the dispute resolution process set forth in ARTICLE XI: of this Agreement. Payments by the ISO to APX at any time, whether or not during the pendency of any dispute, shall not constitute a waiver of any claim or right by NEPOOL nor an admission that the type, quality or quantity of the service or goods provided is acceptable.

7.3 Remaining Payments.

Within 60 days of the expiration or termination of this Agreement for any reason, APX shall submit to the ISO an itemized invoice for any fees and/or amounts due under this Agreement from the Effective Date through the date of such expiration or termination, but not previously paid. Upon receipt of these fees by APX, except for any unpaid transition services fees [REDACTED], NEPOOL shall thereafter have no further liability or obligation to APX whatsoever for any further fees or expenses arising under this Agreement.

7.4 ISO Billing Policy.

NEPOOL shall not consent to or support any amendment to the ISO Billing Policy in such a way that it materially adversely affects the provisions therein relating to the priority of payments to APX under this Agreement without the consent of APX, which consent will not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII: CONFIDENTIAL DATA AND SECURITY

8.1 Precautions Taken to Protect Confidential Information.

(a) During the term of this Agreement and for a period of two (2) years thereafter, a Party receiving Confidential Information (the “**Receiving Party**”) of the other Party (the “**Disclosing Party**”) shall protect the Confidential Information of the Disclosing Party with the same degree of care that the Receiving Party uses to protect its own confidential information, but in no event with less than reasonable care. Notwithstanding the foregoing, the Receiving Party may share the Confidential Information of the Disclosing Party with the Receiving Party's permitted subcontractors, outside consultants, advisers and/or attorneys, in each case who have a

need to know and who have been advised of the confidential nature of the Confidential Information, and who are bound by confidentiality obligations at least as protective as those set forth in this Agreement.

(b) Without limiting the general applicability of the security standards set forth above, APX shall also implement the data security provisions set forth in the Service Level Agreement.

(c) For the purposes of this Agreement, NEPOOL shall be deemed to be the Disclosing Party with respect to any Confidential Information of NEPOOL or any NEPOOL Participant obtained by APX.

(d) This provision shall not apply to any information received by the Receiving Party which:

(i) can be demonstrated by reasonably documented proof to have been in the possession of the Receiving Party prior to receipt thereof from the Disclosing Party without any obligation of confidentiality or to have been developed in the course of work entirely independent of any disclosure made hereunder or the subject matter of this Agreement;

(ii) is or becomes part of the public domain other than through breach of this Agreement or through the fault of the Receiving Party;

(iii) is or becomes available to the Receiving Party from a source other than the Disclosing Party which source has no obligation to the Disclosing Party in respect thereof;

(iv) is made available by the Disclosing Party in written form to a third party on an unrestricted basis; or

(v) is required to be disclosed by subpoena, law or other directive of a court, administrative agency or arbitration panel.

8.2 Security Standards.

In the performance of its obligations under this Agreement, APX shall use state-of-the-art data centers protected using industry-standard equipment and access methods. APX shall abide by the “APX Registry Platform Security Overview” attached as Exhibit D to this Agreement. APX shall undergo, at its own cost, an SSAE 18 SOC 2 audit of its computer systems, security procedures and security and data breach policies in 2018 and in one of the first three calendar quarters of 2020 to demonstrate that it has the proper controls in place to meet then-current industry criteria for security, data availability and processing integrity. Upon NEPOOL’s written request, APX shall provide NEPOOL a copy of such SOC 2 audit report.

8.3 Disaster Recovery and Business Continuity.

Throughout the term of this Agreement, APX shall implement the following disaster recovery and business continuity capabilities for the GIS and User Data:

- (a) Fully redundant data center locations in geographically separated regions of the United States;
- (b) Fully redundant network infrastructures in each data center location and operations facility and real-time data mirroring and replication between the data centers and off-site backup of the database;
- (c) An off-site operations facility to handle the operation of the GIS in the event that the primary operations facility cannot be used, which off-site facility shall include workstations, network access, and automated phone re-routing;
- (d) Back up the GIS Software and User Data as a precaution against loss of the Equipment due to damage, and data loss or corruption. To protect against “loss of Equipment” failures, APX will use the “image” backup method. Such “image” shall allow the GIS operating system to be re-constructed in a short period of time once the damaged Equipment has been repaired. To protect against “data loss or corruption” failures, APX shall electronically place the Software, User Data and other GIS database files (collectively, the “**GIS Files**”) into a “vault” at a geographically separate facility. Such storage of the GIS Files shall allow APX to retrieve and, if necessary, restore the GIS, including all User Data, on the same or different Equipment; and
- (e) Regular ad-hoc backups (archives) of the GIS Files. APX shall store the archived backups of the GIS Files off-site using electronic vaulting technology placed onto appropriate media for storage. APX shall maintain appropriate capabilities to recover the GIS Files, including, without limitation, the ability to:
 - (i) Reload the GIS database from a known recovery point using the “dumped” copy of the database;
 - (ii) Reload the GIS database to a known recovery point using the database transaction logs applied to restored database created from a “dumped” copy;
 - (iii) Reload the GIS database on the actual production system or test system available to APX as part of application service provider services; and
 - (iv) Recover the GIS Files in less than forty-eight (48) hours. During the recovery period, APX shall make the GIS disaster recovery database available to GIS account holders. APX shall maintain all backups of the GIS Files for a minimum of two (2) weeks, or such longer period as required by industry best practices.

8.4 ISO Information Policy.

APX acknowledges receipt of the ISO Information Policy, and agrees to be bound by the terms thereof as the same may be reasonably amended, modified, supplemented or restated from time to time.

8.5 News Releases.

APX agrees not to release advertising or publicity matter pertaining to this Agreement and/or resulting therefrom or pertaining to the performance of this Agreement without the prior written approval of NEPOOL, which approval shall not unreasonably be withheld, conditioned or delayed.

8.6 Survival of Confidentiality.

Except as provided in Section 8.1, the provisions of this Article shall survive any termination or expiration of this Agreement for a period of two years.

ARTICLE IX: LIABILITY; INSURANCE; REMEDIES; INDEMNIFICATION

9.1 Limitation on Liability.

Each Party's liability to the other for any matter relating to or arising from this Agreement, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, with respect to any and all breaches, nonperformance, acts or omissions hereunder, shall not exceed an amount equal to total amount of fees paid or payable by NEPOOL to APX under this Agreement. The obligations and liabilities of the individual Participants from time to time under this Agreement are limited to their proportionate responsibility for the costs incurred hereunder at the time of determination according to the cost allocation methodology in effect at such time within NEPOOL.

9.2 Exclusion of Certain Damages.

Except as provided in Section 9.4(b)(v), in no event shall either Party be liable to the other Party for consequential, indirect, incidental, special, exemplary or punitive damages (including, without limitation, damages due to business interruption or lost profits, competitive advantage or goodwill) arising from or related to this Agreement, regardless of the type of claim, whether in contract, warranty, equity, negligence, intended conduct or otherwise and regardless of the cause of such damages even if such damages were foreseeable.

9.3 Insurance.

APX shall, at its sole cost and expense, procure and maintain Commercial General Liability Coverage with a General Aggregate of a minimum of \$2,000,000 including Products and Completed Ops Aggregate with a minimum of \$2,000,000, coverage for personal or bodily injury in the minimum amount of \$1,000,000, and on an occurrence basis in the minimum amount of \$1,000,000, (ii) professional liability insurance covering damages arising out of errors or omissions committed by APX in the performance of this Agreement, with a liability limit of not less than \$2,000,000. APX shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with this Agreement. APX shall provide NEPOOL with timely renewal certificates as the coverage renews.

9.4 Indemnity.

(a) Each Party (“**Indemnifying Party**”) shall indemnify, defend and hold harmless the other Party, its officers, directors, employees, contractors, subcontractors and agents (collectively, the “**Indemnified Party**”) from and against any and all loss, liability, claims, demands, judgments, and expenses (including reasonable attorneys’ fees) arising from claims by third parties resulting from the gross negligence or willful misconduct of the Indemnifying Party and arising from death, bodily injury, and/or the loss of or damage to real or tangible personal property (whether owned or leased).

(b) Each Party shall indemnify, defend and hold harmless the other, its members, officers, directors, employees, contractors, subcontractors and agents from and against any and all loss, liability, claims, demands, judgments, and expenses (including reasonable attorneys’ fees) arising from claims by third parties, whether based in whole or in part in contract, tort, negligence, statute or otherwise, arising from any of the following:

(i) the performance (or non-performance as required) of any of the Indemnifying Party’s material obligations under this Agreement;

(ii) any violation by the Indemnifying Party of applicable laws and regulations, including but not limited to Attribute Laws and consumer laws and regulations;

(iii) the Indemnifying Party’s failure to perform any obligations under any license, lease or other agreement between it and a third party;

(iv) the Indemnifying Party’s failure to obtain any consents for performance of its obligations under this Agreement;

(v) the infringement by any portion of the GIS of any Intellectual Property Rights (applicable only to APX); or

(vi) any breach of the confidentiality of User Data.

(c) The Indemnifying Party shall bear the expense of such defense and pay any damages and costs awarded by a court of competent jurisdiction against the Indemnified Party, or any settlement amounts agreed by APX and NEPOOL to be paid, and related expenses incurred in such action which are attributable to such claim.

(d) The Indemnified Party shall promptly notify the Indemnifying Party in writing of a claim or suit. The Indemnifying Party shall assume the defense thereof; provided, however, that the Indemnified Party shall have the right to retain separate counsel and participate in the defense of such claim or suit. The Indemnifying Party shall not be required to indemnify the Indemnified Party to the extent that such Indemnifying Party has suffered any damage as a result of any failure or delay by the Indemnified Party in providing the notice required hereunder.

9.5 Injunctive Relief/Specific Performance.

In the event of a breach or threatened breach of any material provision of this Agreement, including a breach of confidentiality, both Parties hereby acknowledge and agree that the other

Party (a) may suffer immediate irreparable harm and significant injury and loss which would be difficult to ascertain and which would not be fully compensable by damages alone and (b) shall have the right to seek immediate temporary or permanent injunctive relief, specific performance or other equitable relief, without prejudice to any other rights and remedies available to such Party under this Agreement.

9.6 Cumulative Rights.

Except as otherwise expressly limited or provided herein, all rights and remedies of the Parties specified herein are cumulative and are in addition to, not in limitation of, any rights or remedies that NEPOOL or APX may have at law or in equity, and all such rights and remedies may be exercised singularly or concurrently.

9.7 Acknowledgments and Applicability of Limitations.

Each Party acknowledges that the provisions of this Agreement set forth the bargained-for allocation of risk under this Agreement and that such Party considered such provisions in determining the price to be paid to APX hereunder. The limitations and exclusions contained in this Agreement will apply regardless of (i) the form of action, (ii) the type of damages, (iii) any claim or finding with respect to the adequacy, failure, purpose or sufficiency of any remedy offered or provided for under this Agreement and (iv) whether a Party was informed or aware of, or otherwise could have anticipated the possibility of, such damages or liability.

ARTICLE X: REQUIRED INFORMATION

10.1 Inspection.

APX shall permit the representatives of NEPOOL, at the expense of NEPOOL and upon reasonable prior notice to APX, to visit APX's principal executive office, the site(s) where the GIS is hosted, the site of any customer service and training functions for the GIS and any other office(s) from which APX performs Services to inspect the GIS and related systems and books and records (and to make extracts from and copies of such books and records) and to discuss the affairs, finances and accounts of APX with APX's officers and (with the consent of APX, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of APX, which consent will not be unreasonably withheld, conditioned or delayed) to visit the other offices and properties of APX, all at such reasonable times and as often as may be reasonably requested in writing.

10.2 Right of Audit.

APX shall keep accurate records and documentation to substantiate the amounts claimed in any invoice. Such records for equipment or any hourly billed services and related expenses shall be made available to NEPOOL at all reasonable times upon reasonable notice. In addition, upon reasonable advance notice, such records for equipment or any non-warranty hourly billed services and related expenses shall be open to audit by NEPOOL or any authorized representative of NEPOOL during the term of this Agreement and until two years after expiration or earlier termination of this Agreement. Any such audit shall be at NEPOOL's sole cost and expense.

10.3 Notices by Governmental Authorities.

APX shall cooperate with NEPOOL to aid NEPOOL's timely compliance with any government agency inquiry and will promptly furnish to NEPOOL true and complete copies of any notice or claim by any governmental agency or authority received by APX which pertain to the GIS.

ARTICLE XI: DISPUTE RESOLUTION

11.1 Mediation.

Except for matters related to confidentiality or intellectual property rights, the Parties shall first attempt in good faith to resolve any dispute or alleged breach internally by escalating it through management for a period of thirty (30) days, and prior to pursuing litigation, the Parties shall submit such dispute to non-binding mediation, subject to the Parties agreeing on a mediator and the timeframe for such mediation. A failure to select a mediator and commence mediation within thirty (30) days of the end of respective management attempts to resolve shall result in the matter being referred to the American Arbitration Association ("AAA"), New York City, for binding arbitration in accordance with the AAA Rules for Commercial Arbitration.

11.2 Continuation of Services.

Notwithstanding anything to the contrary contained in this Agreement, and irrespective of the existence of any dispute between the Parties, APX shall continue to perform its obligations under this Agreement during the pendency of any mediation or arbitration of such dispute, provided that NEPOOL is making timely payment for obligations in accordance with the payment provisions of this Agreement.

ARTICLE XII: REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of APX.

APX represents and warrants to NEPOOL, as of the Effective Date, as follows:

- (a) APX is a California corporation duly formed, validly existing and in good standing under the laws of its jurisdiction of formation;
- (b) APX has all requisite power and authority to own its assets and properties, to carry on its business as now conducted, and to enter into and perform this Agreement;
- (c) The execution, delivery and performance of this Agreement by APX has been duly authorized by all requisite organizational action;
- (d) This Agreement constitutes the valid and binding obligation of APX enforceable against APX in accordance with its terms;
- (e) The entering into and performance by APX of this Agreement will not breach or violate any provision of the certificate of incorporation or bylaws of APX or any provision of

any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which APX is a party or by which its assets or properties are bound;

(f) APX has obtained all material licenses, permits, consents and other authorizations and has taken all actions required by applicable laws or governmental regulations in connection with its business as now conducted;

(g) APX is not in default with respect to any order of any court, governmental authority or arbitration board or tribunal to which APX is subject and which will have a material adverse effect on APX, its ability to perform its obligations under this Agreement or the GIS;

(h) There are no pending or threatened suits, legal proceedings, claims or governmental investigations against or with respect to APX that would have a material adverse effect on its ability to perform its obligations under this Agreement;

(i) APX has adequate and sufficient working capital in order for APX to perform the Services; and

(j) APX does not own or control with power to vote any shares in any NEPOOL Participant. To the best of its knowledge and belief, APX certifies that no NEPOOL Participant currently owns any shares in APX that constitute a controlling interest or exceed ten (10%) percent of issued stock.

12.2 Software and Services Warranty.

APX warrants that, to its knowledge, neither the Software nor the Documentation infringes any registered U.S. patent or copyright, and does not infringe or misappropriate the Intellectual Property Rights of any third party. APX warrants that its obligations hereunder shall be performed in a timely, professional, good and workmanlike manner by qualified personnel in accordance with industry standards. APX warrants that the GIS, including the Software and Interfaces, will substantially conform to the Functional Requirements, any functional specifications set forth in the Service Level Agreement, and any Documentation.

12.3 Warranty Disclaimer.

The APX warranties set forth specifically in this ARTICLE XII: are the only warranties of APX and are expressly in lieu of all other warranties, express or implied, and APX MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, except as expressly set forth herein.

12.4 Representations and Warranties of NEPOOL.

NEPOOL represents and warrants to APX that, as of the Effective Date:

(a) It possesses the organizational authority and power to enter into and perform under this Agreement;

(b) The Participants are bound by the terms of the Restated NEPOOL Agreement and the ISO Billing Policy, each as in effect from time to time;

(c) The execution, delivery and performance of this Agreement by NEPOOL has been duly authorized by all requisite organizational action;

(d) This Agreement constitutes the valid and binding obligation of NEPOOL enforceable against NEPOOL in accordance with its terms;

(e) The entering into and performance by NEPOOL of this Agreement will not breach or violate any provision of the Restated NEPOOL Agreement or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which NEPOOL is a party or by which any of its assets or properties are bound;

(f) NEPOOL has obtained all material licenses, permits, consents and other authorizations and has taken all actions required by applicable laws or governmental regulations in connection with its business as now conducted; and

(g) NEPOOL is not in default with respect to any order of any court, governmental authority or arbitration board or tribunal to which NEPOOL is subject and which will have a material adverse effect on NEPOOL, its ability to perform its obligations under this Agreement or the GIS.

12.5 Survival of Representations and Warranties.

Except for the software warranties immediately above, all representations and warranties by APX contained herein and in this Agreement shall survive the date of execution hereof and any termination or expiration hereof for at least two years.

ARTICLE XIII: MISCELLANEOUS

13.1 Waiver.

Notwithstanding anything to the contrary contained in this Agreement, the failure of either Party to seek a redress for any violation, or to insist upon the strict performance of any covenant, agreement, provision or condition hereof shall not constitute the waiver of the terms of such covenant, agreement, provision or condition at subsequent times or of the terms of any other covenant, agreement, provision or condition, and each Party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted a violation hereunder.

13.2 Governing Law.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Connecticut and shall be governed by and construed and interpreted in accordance with the laws of the State of Connecticut that apply to contracts executed in and performed entirely within the State of Connecticut, without reference to any rules of conflict of laws.

13.3 Notices.

All notices, requests, demands and other communications required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given, made, and received only when personally delivered, sent by electronically confirmed facsimile transmission, delivered by Federal Express or other nationally recognized courier service, or three days after having been deposited in the United States mail, certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to NEPOOL:

Chair, NEPOOL Participants Committee
c/o Day Pitney LLP
242 Trumbull Street
Hartford, CT 06103-1212
Facsimile: (860) 275-0343

with a copy to:

Paul N. Belval, Esq.
Day Pitney LLP
242 Trumbull Street
Hartford, CT 06103-1212
Facsimile: (860) 275-0343

And to:

ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040

If to APX:

APX, Inc.
2001 Gateway Place, Suite 315W
San Jose, CA 95110
Attention: NEPOOL Registry
Fax: (408) 517-2985

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

13.4 Severability.

The provisions of this Agreement are independent of and separable from each other, and no provisions shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. If any

part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in effect.

13.5 Entire Agreement.

This Agreement, when executed by NEPOOL and APX, including the attached Exhibits, will contain the entire understanding among the parties hereto with respect to the subject matter hereof, and will supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. If there is a conflict between this Agreement and the attached Exhibits, the terms of this Agreement shall govern. This Agreement may not be modified or amended other than by an agreement in writing signed by an authorized representative of each Party.

13.6 Headings.

The headings in this Agreement are for convenience of reference only; they will form no part of this Agreement and shall not be given any substantive or interpretive effect whatsoever.

13.7 Multiple Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one, and the same instrument; provided, however, that in making proof hereof, it shall not be necessary to produce or account for more than one such counterpart, so long as identical counterparts are executed by each Party. Facsimile signatures on this Agreement, including those transmitted in portable document format (.pdf) or other electronic means, shall have the effect of original signatures hereon.

13.8 Assignment.

Neither Party may assign any duties, rights or claims under this Agreement without the prior written consent of the other Party; provided, however, that NEPOOL may (but shall not be required to) assign this Agreement in its entirety to any Person or organization that succeeds to NEPOOL's or the ISO's responsibilities on or after the Effective Date with respect to the Control Area without APX's prior written consent. No assignment or other transfer permitted by this Section shall operate as a release of the assignor's obligations or liabilities hereunder, and the assignor shall remain liable hereunder notwithstanding such assignment or other transfer. In the event of any assignment permitted by this Section, the instrument of assignment shall be executed by the assignee and shall expressly state that the assignee assumes all of the applicable obligations and liabilities of the assignor contained herein.

13.9 No Rights in Third Parties.

This Agreement shall inure to the benefit of and bind the Parties and the respective and permitted successors and assigns of the Parties. Except as specifically stated nothing expressed or referred to herein is intended or shall be construed to give any Person other than the Parties or their

respective permitted successors and assigns any legal or equitable right, remedy, or claim under or in respect hereof or any provision contained herein, it being the intention of the Parties that this Agreement shall be for the sole and exclusive benefit of such Parties or such permitted successors and assigns and not for the benefit of any other Person. Without limiting the foregoing, nothing contained in this Agreement is intended to confer upon any Person (other than the Parties, the ISO and their permitted successors and assignees) any rights, benefits or remedies of any kind or character whatsoever, and no other Person shall be deemed a third party beneficiary under or by reason of this Agreement.

13.10 Cooperation; Further Assurances.

Each Party shall deal in good faith with the other and shall cooperate fully with the other Party and shall execute such further instruments, documents and agreements, shall take such further actions, and shall provide such further written assurances, as reasonably may be requested by the other Party, to better evidence and reflect the transactions described in this Agreement and contemplated hereby and to carry into effect the intents and purposes hereof. Both Parties agree to cooperate with any other consultants, vendors or entities as may reasonably be requested in connection with this Agreement.

13.11 Time of Essence.

Time shall be of the essence of this Agreement in all respects.

13.12 References.

The use of the words “hereof”, “herein”, “hereunder”, “herewith”, and words of similar import shall refer to the entire Agreement to be executed by NEPOOL and APX, and not to any particular article, section, subsection, clause, or paragraph hereof, unless the context clearly indicates otherwise.

13.13 Exhibits.

All Exhibits attached to this Agreement are by reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

13.14 Calendar Days, Weeks and Months.

Unless otherwise specified herein, any reference to “day”, “week” or “month” in this Agreement shall mean a calendar day, week or month. References to “business days” herein shall mean Monday through Friday, inclusive, but excluding federal and Connecticut state holidays. •

13.15 Gender.

Where the context of this Agreement so requires, the masculine gender shall include the feminine or neuter, and the singular shall include the plural and the plural the singular.

13.16 Compliance with Laws.

Each party agrees that it will comply, at its expense, with all applicable, federal, state, local and foreign laws, regulations, and codes applicable to its performance of this Agreement, provided however, if any such law, regulation or code should materially impact APX's Services obligations hereunder then in that event the Parties shall confer in good faith and negotiate any appropriate modifications to this Agreement, including increases to the fee schedule, if appropriate. In the event no mutually acceptable agreement is reached between NEPOOL and APX regarding requisite modifications to this Agreement to address such legal or regulatory changes then the Parties shall be entitled to terminate this Agreement on ninety (90) days written notice and, if this Agreement is so terminated by NEPOOL, APX shall be paid all amounts due to it as of the effective date of such termination.

13.17 Actions by NEPOOL.

Unless specifically provided to the contrary in this Agreement, all actions by NEPOOL shall be taken by the chair of the NPC or the designee of such chair, following consultation with members of the NPC, the Committee, staff of the ISO, or NEPOOL counsel, as he or she deems appropriate.

13.18 Participation in NEPOOL.

During the term of this Agreement APX shall not generate, transmit or distribute electric power or Certificates as a principal in New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) without the prior written consent of NEPOOL, which consent will not be unreasonably withheld, conditioned or delayed. The parties acknowledge that (i) participation by APX as a service provider to or as an agent on behalf of a principal (including acting as a Participant) is permitted by the foregoing sentence so long as APX does not exercise any discretion in such capacity and (ii) APX is permitted to purchase Certificates for the purpose of offsetting its own consumption of electric power.

13.19 Non-Solicitation of Employees

Unless otherwise mutually agreed to by the Parties in writing, the Parties agree not to solicit the employment of any personnel of the other party directly or indirectly during the term hereof and for a period of six months thereafter.

13.20 Force Majeure.

Neither Party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event APX is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by APX in writing within five (5) business days after the start of the occurrence of such delay.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

NEW ENGLAND POWER POOL

By: _____
Name:
Title:

APX, INC.

By: _____
Name:
Title:

ISO New England Inc. joins in this Agreement solely for purposes of acknowledging the payment and transition protocols set forth in ARTICLE III and ARTICLE VII of this Agreement.

ACKNOWLEDGED:

ISO New England Inc.

By: _____
Name:
Title:

Exhibit A

Service Level Agreement

Capitalized terms in this Exhibit not otherwise defined in the Agreement have the meanings given to them in the GIS Operating Rules, as in effect on the Effective Date.

A) Transaction Response Times

All reports and available pages load, and associated API methods return results, within 20 seconds, as measured on each Creation Date once Certificates have been populated to accounts.

B) Application availability

99% for non-Trading Period intervals, and 99.9% for Trading Period interval availability outside of scheduled downtime for maintenance. This equates to approximately 2.5 hours per non-Trading Period interval, and 60 minutes per Trading Period interval, where downtime is defined as the server not responding within 30 seconds for any activity (e.g. login, report access, screen access).

Non-critical maintenance must be scheduled at least 24 hours in advance and be performed outside of normal business hours, which are defined as Monday through Friday, 8am to 8pm eastern prevailing time. APX will use server monitoring software to track downtime of the server and provide the results to NEPOOL on a quarterly basis. 24-hour advance notice of planned application /API outage provided to GIS account holders, and notice of unplanned application/API outage provided to GIS account holders within 30 minutes of recognition by APX.

C) Application Capacity

In the first Contract Year, the GIS will have capacity to process all critical functions (including API methods, outbound Certificate transfers, inbound Certificate transfers, retirement of Certificates, and transaction views) within defined standard transaction response times for 10,000 unique Certificate records; provided that the GIS will be capable of processing such critical function outside defined responses times for at least 20,000 unique Certificate records. In each subsequent Contract Year, the 10,000 and 20,000 Certificate record capacity requirements increase 50%, compounding.

In each calendar quarter, there will be no more than 5 instances where server CPU utilization exceeds 80% for longer than 5 minutes, and in each quarter, there will be no more than 5 instances where database CPU utilization exceeds 80% for longer than 5 minutes.

D) Resolution Times for reported problems and user questions

Business Objective	Timing	Criticality	Resolution Time
Maintain critical UI and API functionality during “Key Periods”	“Key Periods” are 8 a.m. to 8 p.m. (EPT) during (1) the period beginning six days prior to each Creation Date and ending on the day after each Creation Date and (2) the last three days of each Trading Period	High	Administrator to make all reasonable effort to resolve all such errors within four hours of initial error report
Maintain Transfer Functionality between GIS accounts, including inbox/outbox, transferrable file, transfer history and access to corresponding reports	Entire Trading Period	High	Administrator to make all reasonable effort to resolve all such errors within four hours of initial error report
Log in to account/API authentication/password reminder and reset	At all times	High	Administrator to make all reasonable effort to resolve all such errors within four hours of initial error report
Asset registration, account registration, appointment of Responsible Party	Two months prior to Creation Date	Medium	Administrator to make all reasonable effort to resolve all software related processing errors within 24 hours of initial error report
Asset ownership transfers	Creation Date	Low	Administrator to make all reasonable effort to resolve all processing errors within three (3) business days of initial error report
Access to public reports not associated with transfer and retirement functions	N/A	Low	Administrator to make all reasonable effort to resolve all processing errors within three (3) business days of initial error report

E) SLA Reporting

For measuring and monitoring performance against the SLAs, APX will provide NEPOOL with a regular quarterly report with the following criteria:

- Levels of compliance with transaction response time, application availability, and application capacity standards;
- GIS functionality issues and user inquiries, including the severity classification of each issue (as set forth above) and Administrator’s resolution/response time;
- Unresolved issues with possible solutions and solution timeframes;
- In the event of a business continuity issue, the GIS’s Recovery Point and Recovery Time;

- Any instances of non-compliance with SLA standards, and a brief description of APX's plan to resolve such problems.
- Lists of resolved tickets, open tickets with possible resolution and new tickets without possible resolution for each quarter.

NEPOOL shall have the right to audit annually, at NEPOOL's expense, APX's SLA compliance reports.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]

Exhibit B

Escrow Agreement

(Attached)

EXHIBIT C

FEES

[REDACTED]

EXHIBIT D

APX REGISTRY PLATFORM SECURITY OVERVIEW

[REDACTED]

Rule 1.3

Enhancements to GIS and Amendments to Rules ~~and Adoption of New Rules~~

(a) Adhering to the voting requirements under the Restated NEPOOL Agreement, the NEPOOL Participants Committee (“NPC”) or ~~its delegatee may in its discretion adopt new GIS Operating Rules or amend existing GIS Operating Rules after such amendments or new GIS Operating Rules have been reviewed by the~~ the NEPOOL Markets Committee. ~~After the initial adoption of these GIS Operating Rules by the NPC, new~~ (“MC”) may, in their discretion, amend the GIS Operating Rules and ~~amendments to existing~~ approve modifications to the GIS according to the following process:

- (i) an amendment to the GIS Operating Rules or a modification to the GIS that is required to address a change in law (including, but not limited to, state Attribute Laws) (a “Regulatory Enhancement”) may be adopted or approved by the MC;
- (ii) an amendment to the GIS Operating Rules or a modification to the GIS that is required to address a change in the ISO Tariff, the ISO Market Rules or the functionality of the New England Markets (an “ISO Enhancement”) may be adopted or approved by the MC;
- (iii) an amendment to the GIS Operating Rules or a modification to the GIS that is neither a Regulatory Enhancement nor an ISO Enhancement (a “Discretionary Enhancement”) that (A) will require less than 50 hours of labor by APX or any successor thereto that is developing, administering, operating or maintaining the GIS (the “GIS Administrator”) to implement and (B) will have an estimated cost to NEPOOL of \$30,000 or less may be adopted or approved by the MC; and
- (iv) a Discretionary Enhancement that (A) will require 50 hours or more of labor by the GIS Administrator to implement or (B) will have an estimated cost to NEPOOL of more than \$30,000 must be adopted or approved by the NPC.

(b) Amendments to GIS Operating Rules (including any appendices hereto) and modifications to the GIS that, in either case, are not of an emergency nature, shall become effective on the January 1 or July 1 immediately following their adoption. ~~New~~ or approval unless the GIS Administrator reasonably determines that additional time is required for their implementation. Amendments to GIS Operating Rules ~~or amendments to existing GIS Operating Rules~~ (including any appendices hereto) and modifications to the GIS that are of an emergency nature shall become effective on the date designated by the NPC or ~~its delegatee~~ the MC, in consultation with ~~APX or any successor thereto that is developing, administering, operating or maintaining the GIS (the “the GIS Administrator”).~~ For purposes of this Rule 1.3, a new GIS Operating Rule or an amendment to an existing GIS Operating Rule shall be considered to be of an “emergency nature” if the NEPOOL Project Manager for the GIS (the “NEPOOL GIS Project Manager”) in good faith determines that delaying the effectiveness of such GIS

Operating Rule or amendment until the next scheduled semi-annual effective date would:

- (i) materially compromise the functionality of the GIS;
- (ii) materially and adversely affect the usefulness of the GIS as a means of complying with any Attribute Law;
- (iii) materially and adversely affect the rights or interests of an Account Holder (defined below) or the GIS Administrator; or
- (iv) impair the competitiveness of the market for Certificates.

(~~b~~c) No ~~new amendment to the~~ GIS Operating Rules ~~or amendment to an existing GIS Operating Rule~~ shall be inconsistent with the provisions of the GIS Agreement or the Functional Requirements. To the extent that the Functional Requirements are inconsistent with the GIS Agreement, then solely for purposes of this Rule 1.3, the Functional Requirements shall govern.