



Energy

Green-e® Energy Certification Terms and Conditions

These Green-e® Energy Certification Terms and Conditions are part of the Green-e® Energy Certification and Logo Use Agreement governing Participant's involvement in the Green-e® Energy Certification program and Participant's use of the Green-e® Logo. Initially capitalized terms used but not defined in this Appendix have the meanings given in the main body of the Green-e® Energy Certification and Logo Use Agreement or, if not defined in the main body of the Green-e® Energy Certification and Logo Use Agreement, in the Green-e Glossary available at <http://green-e.org/contract>.

1. Green-e Energy Certified Logo

1.1 Definition. “Green-e logo” or “Logo” means the certification marks registered and owned by Center, consisting of the graphic design mark “circle e” and the words “Green-e” below and must be accompanied with the words “Energy Certified.” The Logo represents that a renewable electricity product or renewable energy certificate (REC) product meets the standards established by Center for renewable energy use in the United States, Canada and Mexico. Only Participants in Center's Green-e programs may use the Logo in association with the certified product or to indicate certification of the certified product.

1.2 License. Subject to and conditioned on Participant's compliance with the Agreement, Center hereby grants Participant a nonexclusive, worldwide, non-transferable, personal, limited license (without the right to sublicense) to use and display the Logo during the term of the Agreement in connection with Product meeting the requirements set forth in the Agreement and Participant's promotional and advertising materials, in each case solely to certify that Participant's Product meets the standards established by Center for renewable energy use in the United States, Canada and Mexico. To be clear, the foregoing license applies only to the particular Product(s) described in the main body of the Green-e® Energy Certification and Logo Use Agreement and is expressly conditioned on such Product(s) meeting the requirements set forth in the Agreement. If Participant makes changes to Product (e.g., changes in resource mix), Participant will remain licensed under the Agreement with respect to the changed Product only if the changed Product otherwise complies with the Agreement and Participant provides Center with prompt notification of all changes in writing. If the Product is marketed and sold by Participant and one or more other vendors under a “Hub and Spoke” model (for example, a bundled product consisting of the output of a wind turbine, a landfill gas facility, and a solar array that is sold by members of a transmission and distribution cooperative), subject to and conditioned on Participant's compliance with the Agreement. The license extends solely to those other vendors of the Product that are identified to Center in writing in advance. Participant will ensure that such vendors comply with the Agreement and Participant will be liable

for the acts and omissions of such vendors as if performed by Participant under the Agreement. A Participant under the Broker category may use the Green-e Logo to represent that they are able to broker a certified transaction.

1.3 Logo Use Guidelines. Participant will include an appropriate trademark indicator (“™” or “®”) and any other proprietary rights notice in connection with Participant’s use of the Logo, as set forth in Center’s then-current Green-e® Logo Use Guidelines, as incorporated in the Agreement and as may be updated from time to time. Participant will use and display the Logo in compliance with such guidelines and the Agreement.

1.4 Limitations. Participant will not use or display (or authorize others to use or display) the Logo in any manner whatsoever other than as expressly set forth in the Agreement. Participant agrees that all use of the Logo, and all goodwill arising out of such use, will inure to the benefit of Center. Participant will not adopt, use or apply for registration of the Logo (or any trademark confusingly similar to the Logo) anywhere in the world, and Center will retain the exclusive right to apply for and obtain registrations for the Logo and any of its other trademarks throughout the world. Participant will not engage, participate or otherwise become involved in any activity or course of action either independently or with others that diminishes or tarnishes the image or reputation of the Logo or otherwise derogates Center’s rights in the Logo. Participant may use the Logo to indicate that Product is certified by Center in accordance with the Agreement, but will not use the Logo in any way as an endorsement or sponsorship of any product by Center. Center’s certification will not constitute representations or warranties of Center or give rise to any right of reliance for the benefit of Participant or any third party.

1.5 Reservation of Rights. All rights not expressly granted in the Agreement are reserved by Center. Participant acknowledges that it has not acquired, and will not acquire, any right, title or interest in or to the Logo, except the limited right to use the Logo as expressly set forth in the Agreement. Participant acknowledges that Center is the owner of all right, title and interest in and to the Logo, and will not challenge the validity of the Logo, Center’s ownership of the Logo, or the enforceability of Center’s rights in the Logo during the term of the Agreement.

2. Other Matters

2.1 Cooperation with the Verification Process. For each Product for which Participant displays the Logo or otherwise uses the Logo to indicate certification, Participant will purchase or generate sufficient eligible supply to match Participant’s certified transactions (and provide Center with documentation of such upon Center’s request). Participant will cooperate with Center to verify Participant’s compliance with Center’s verification and compliance procedures and other terms of the Agreement and to prevent double counting and double claiming. Participant will make all disclosures required by Center’s Product verification and compliance procedures (including as set forth in Appendix B:Green-e® Energy Code of Conduct to the Agreement), such as submitting information through the online verification tool made available by Center and providing requested documents as part of the marketing compliance review documents and responding to other correspondence provided by Center. In addition, Participant will cooperate with the verification process by: (a) promptly responding to Center’s

reasonable requests, (b) providing the independent or certified auditor described below with access to Participant's relevant books and records for the purchase, generation, supply, sale and marketing of Product; and (c) remedying any identified noncompliance or improper use of the Logo. As part of the verification process, Participant will, at Participant's expense, engage an independent auditor or approved certified internal auditor to inspect the books and records of Participant relating to the purchase, generation, supply, sale and marketing of certified Product, solely to the extent necessary to verify Participant's compliance with Center's verification and compliance procedures and other terms of the Agreement and to prevent double counting and double claiming. Participant will provide the auditor with (or access to) all information, data and other documentation as Center may reasonably request in connection with such inspection. This Section 2.1 will apply during the term of the Agreement and for three (3) years after termination or expiration of the Agreement.

2.2 Product Examples. For each Product on which Participant displays the Logo or otherwise uses the Logo, Participant will provide Center a representative example of the Logo use (e.g., screen shot, photograph or other image displaying the Logo in association with the Product) and a written list of the country(ies) where Participant provides the Product. Participant will also provide representative examples of any packaging, advertising or other publicly disseminated material related to the Product in accordance with Center's marketing compliance review and from time to time as Center may reasonably request.

2.3 Acknowledgement of Program Participation. Participant agrees that Center may, in connection with documentation, advertising, press releases, newsletters, reports and other publications, www.green-e.org and other websites affiliated with Center, and any other materials, correspondence or other forms of communication by or on behalf of Center to any third party, including regulators and watchdog organizations (for example, the Federal Trade Commission, Public Utility Commission or Attorney General) and other stakeholders: (a) identify Participant as a participant in the Green-e® Energy Certification program and licensee of Center; (b) identify or list Product as compliant with Center's certification standards; (c) or if noncompliant, identify Product as no longer compliant with Center's certification standards or otherwise not meeting the requirements of the Green-e® Energy Certification program or the Agreement; and (d) use, reproduce and display copies of the Logo use examples and other materials provided by Participant under Section 2.2 in connection with activities related to (a)-(c) above.

2.4 Changes to Program Documentation

2.4.1 Changes to the Standard. Center will continue to monitor the renewable energy marketplace in the US, Canada and parts of Mexico to define the Green-e® Energy National Standard ("**Standard**") set forth in Appendix D: Green-e® Energy National Standard to the Agreement. If Center wishes to make any material changes to the Standard (for example, changes to product specifications and the definition of eligible sources of supply), Center will use reasonable efforts to seek feedback, comments and input from Participant and other stakeholders before making any such changes. If Center makes any material changes to the Standard, Center will use reasonable efforts to provide Participant with a revised version of the Standard by

any reasonable means (including by emailing notice of the revision to Participant) one year prior to the effective date of the material changes. If Participant objects to the revised version set forth by the Center, Participant may terminate the Agreement by written notice to Center. If Participant does not notify Center of Participant's objection (and termination) within thirty (30) days after Center first provided notice of the revised version, Participant's use or display of the Logo or payment of fees due under the Agreement after the effective date of such revised version will be deemed Participant's acceptance of the revised version; however, changes to the Standard will not apply to any dispute between the parties based on a claim filed before the effective date of the changes. Notwithstanding the foregoing, if Center reasonably believes that changes to the Standard are necessary for Center or Participant to comply with any applicable laws, regulations, orders, or standards of any government authority, to prevent double counting or double claiming, or to ensure effective disclosure, Center may make such changes to the Standard immediately by providing Participant with the revised version by any reasonable means (including by emailing notice of the revision to Participant), and such changes will apply to Participant thereafter unless Participant provides Center written notice of Participant's objection to the revised version and termination of the Agreement; however, such changes will not apply to any dispute between the parties based on a claim filed before the effective date of the changes.

2.4.2 Changes to Other Agreement Documents. For any part of the Agreement (including any document incorporated in the Agreement) other than the Standard (such other document, "**Other Document**"), Center may update, modify and amend the Other Document at any time: (a) by providing Participant with the revised version by any reasonable means (including by emailing notice of the revision to Participant); and (b) immediately without notice in the event such revision is necessary for Center or Participant to comply with any applicable laws, regulations, orders, or standards of any government authority, to prevent double counting or double claiming, or to ensure effective disclosure. If Participant objects to the revised version set forth by the Center, Participant may terminate the Agreement by written notice to Center. Participant's use or display of the Logo or payment of fees due under the Agreement after the effective date of such revised version will be deemed Participant's acceptance of the revised version; however, changes to the Other Document will not apply to any dispute between the parties based on a claim filed before the effective date of the changes.

2.5 Center's Other Certification Programs. Center offers other certification programs related to renewable energy. Customers of Participant may be eligible to participate in these other certification programs offered by Center. If Participant's customers express interest to Participant in participating in these other certification programs, Participant will instruct such customers to contact Center directly. Except as expressly set forth in the Agreement, Participant has no authority to grant to any other person or company any right to use, display or otherwise make use of the Logo. If a particular customer of Participant decides to apply for or is participating in Center's certification programs, Participant will cooperate with Center in its efforts to verify the customer's renewable energy purchases, including verifying the amount of Product sold by Participant to the customer.

2.6 Participant is responsible for any costs incurred by Participant in connection with compliance with the terms and conditions of the contract, including but not limited to those contained in the Appendices.

3. Confidentiality

3.1 Center Confidential Information. All information relating to Center's verification process and all other information disclosed by Center under this Agreement that is reasonably understood to be of a confidential or proprietary nature (collectively, "**Center Confidential Information**") will be the confidential information of Center. Participant will not disclose Center Confidential Information to any third party except to the auditor as necessary for verification, and Participant will use Center Confidential Information solely for the purpose of exercising or enforcing Participant's rights and performing Participant's obligations under the Agreement.

3.2 Participant Confidential Information. Customer-specific information provided to Center under Section 2.5 and Product purchase, generation, supply, transactions, sales and marketing information that is reasonably understood to be of a confidential or proprietary nature (collectively, "**Participant Confidential Information**") is confidential information of Participant. Center will keep Participant Confidential Information confidential using a degree of care comparable to that used by Center to protect its own similar confidential information. Center will not disclose Participant Confidential Information to any third party except in aggregate form, except that Center may disclose and use Participant Confidential Information in connection with exercising and enforcing its rights and performing its obligations under the Agreement, including as set forth in Section 2.3 and Section 8.

3.3 Exclusions. The restrictions on disclosure and use in Section 3.1 and Section 3.2 will not apply to information or material that (a) is now, or becomes, through no act or failure to act on the part of the receiving party, generally known or publicly available; (b) is or was known by the receiving party at or before the time such information or material was received from the disclosing party; or (c) is furnished to the receiving party by a third party that is not under an obligation of confidentiality with respect to such information or material. Further, Participant may disclose Center Confidential Information and Center may disclose Participant Confidential Information, as the case may be, with the other party's prior written approval or to the extent required by law or ordered by a court of competent jurisdiction.

4. Payments

4.1 Fees. For each Product, Participant will pay to Center the following fees, as described in Appendix C: Fees to the Agreement and as invoiced to Participant from time to time: (a) an initial base fee (which includes Product fees for Participant's first Product in the Green-e® Energy Certification program); (b) applicable Product fees for each additional product in the Green-e® Energy Certification program; and (c) applicable volumetric fees for certain Products. Further, if Participant fails to timely submit completed Product verification materials, Participant will be subject to late fees as described in Appendix C: Fees to the Agreement. Participant will pay all fees within thirty (30) days after delivery of invoice. All fees are non-refundable. As between Center and Participant, Participant will be responsible for any charges or fees incurred

by Participant or Center in connection with Participant's payment obligations under the Agreement (for example, administration fees or set-up fees imposed by electronic payment systems).

4.2 Taxes. Participant will pay all sales, use, personal property and other taxes resulting from the Agreement or any activities under the Agreement.

5. Representations and Warranties

5.1 By Center. Center represents and warrants that it has all rights and full power and authority to enter into the Agreement and to perform its obligations under the Agreement.

5.2 By Participant. Participant represents and warrants that: (a) it has all rights and full power and authority to enter into the Agreement and to perform its obligations under the Agreement; (b) the disclosures and other information provided by Participant under the Agreement are complete, correct and accurate; and (c) Participant's use of the Logo is and will be performed in accordance with the Agreement and all applicable law.

5.3 Disclaimer. Center makes no representations or warranties regarding direct or indirect financial or other benefits to Participant regarding Participant's use or display of the Logo. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, CENTER HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE REGARDING MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. Without limiting the generality of the foregoing, Participant acknowledges and agrees that the Green-e[®] Energy National Standard established by Center related to the Logo is developed solely based on renewable energy use in the United States, Canada and parts of Mexico, and Center does not currently develop or maintain standards for renewable energy use outside of those regions.

6. Indemnification; Limitation of Liability

6.1 By Center. Center will defend, indemnify and hold harmless Participant and its affiliates, and their respective directors, officers, employees, agents, representatives, successors and assigns, from and against any and all third party claims, actions (including any inquiries, investigations, enforcement actions and other actions by governmental or regulatory entities), and causes of action, and any damages, fines, penalties, liabilities, obligations, judgments, decrees, settlements, costs and expenses (including reasonable attorneys' fees) related to or resulting from any of the foregoing, to the extent arising out of or related to: (a) any breach, or a claim that if true would be a breach, by Center of any of its obligations, covenants, representations or warranties contained in the Agreement; (b) the negligence or willful misconduct of Center; or (c) any violation of or failure to comply with any law applicable to Center by Center; except for, in each case, those claims, actions, and causes of action for which Participant is required to indemnify Center pursuant to Section 6.2. Following notice of a material, bona fide claim or threat of a claim against the Center of

infringement of any trademark in connection with the Logo, Center may, at its option: (i) procure for Participant the right to continue using the Logo; (ii) replace or modify the Logo to make it non-infringing; or (iii) terminate the Agreement.

6.2 By Participant. Participant will defend, indemnify and hold harmless Center and its affiliates, and their respective directors, officers, employees, agents, representatives, successors and assigns, from and against any and all third party claims, actions (including any inquiries, investigations, enforcement actions and other actions by governmental or regulatory entities), and causes of action, and any damages, fines, penalties, liabilities, obligations, judgments, decrees, settlements, costs and expenses (including reasonable attorneys' fees) related to or resulting from any of the foregoing, to the extent arising out of or related to: (a) any breach, or a claim that if true would be a breach, by Participant of any of its obligations, covenants, representations or warranties contained in the Agreement; (b) any use by Participant of the Logo other than as expressly permitted under the Agreement; (c) the manufacture, sale, distribution, promotion or other commercialization of Product; (d) the negligence or willful misconduct of Participant; or (e) any violation of or failure to comply with any law applicable to Participant.

6.3 Indemnification Process. The party seeking indemnification under the Agreement ("**Indemnified Party**") will promptly give written notice to the other party ("**Indemnifying Party**") of any claim or the commencement of any action as to which indemnity is sought, but any failure to provide such notice will not relieve any party of its obligation to indemnify except to the extent such party is materially prejudiced by such delay. The Indemnifying Party may assume the defense of the claim or action and take all steps reasonably necessary at its expense to defend or settle such claim or action, but if it fails to do so the Indemnified Party may undertake such defense and steps reserving all rights against the Indemnifying Party. The Indemnified Party will cooperate with the Indemnifying Party and may participate and appear with the Indemnifying Party in the claim or action at its own expense with legal counsel of its own choosing. Notwithstanding the foregoing, the Indemnifying Party will not consent to any judgment or settlement of any claim or action subject to indemnification by the Indemnifying Party under the Agreement without the prior written approval of the Indemnified Party.

6.4 Limitation of Liability. In no event will CENTER be liable for any loss of profits, loss of revenue, loss of business, or any indirect, incidental, consequential, punitive, exemplary or other special damages however caused arising from or related to THE Agreement or its subject matter, even if advised of the possibility of such.

EXCEPT WITH RESPECT TO SECTION 1, SECTION 3, AND SECTION 6, EACH PARTY'S total cumulative liability to THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE AGREEMENT OR ITS SUBJECT MATTER, whether arising in contract or tort or by statute or other reason, will not exceed the greater of \$4,500 AND the CUMULATIVE amount OF ANNUAL FEES paid by participant to Center FOR THE YEAR(S) IN WHICH THE CLAIM(S) GIVING RISE TO THE LIABILITY AROSE. THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY TO, AND WILL BE IN ADDITION TO, ANY AMOUNTS PAYABLE UNDER THIS AGREEMENT INCLUDING LATE FEES.

7. Term; Termination

7.1 Term. The Agreement will be effective upon the Effective Date and will continue until the fourth anniversary of the end of the calendar year of the Effective Date, unless terminated earlier as provided in this Section 7. The term of the Agreement may be extended for subsequent renewal terms of one (1) year each by Participant's payment of fees invoiced by Center and Center's acceptance of such payment. In addition, Participant may extend the term of the Agreement by notifying Center at least thirty (30) days prior to expiration of the then-current term, in which case the parties will cooperate to amend the Agreement to extend its term. Payment of fees refers to the payment of the relevant fees under the then current fee structure.

7.2 Termination for Convenience. Participant may terminate the Agreement for convenience by providing Center thirty (30) days' written notice.

7.3 Termination for Cause. Either party may terminate the Agreement upon written notice to the other party if the other party: (a) breaches any material term or condition of the Agreement and fails to correct such breach within thirty (30) days (or fifteen (15) days in the case of Participant's breach of Section 2.1, or Section 2.2) following written notice specifying such breach; or (b) applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets (or such a receiver, trustee or liquidator is appointed for the other party), has filed against it an involuntary petition for bankruptcy that has not been dismissed within sixty (60) days, files a voluntary petition for bankruptcy or a petition or answer seeking reorganization, becomes or is insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors.

7.4 Effect of Termination. Any and all rights and licenses to the Logo granted to Participant under the Agreement and other rights and benefits of Participant contemplated by the Agreement (including Participant's participation in the Green-e[®] Energy Certification program with respect to Product) will terminate automatically upon any expiration or termination of the Agreement and Participant will promptly cease all display and use of the Logo, except that (unless the Agreement is terminated for Participant's breach) Participant will have a commercially reasonable period of time (not to exceed thirty (30) days) after the effective date of any expiration or termination to distribute copies or units of Product and Product-related materials bearing the Logo that were produced prior to the effective date of expiration or termination, in each case subject to the Agreement (including, to avoid doubt, Participant's obligations under Section 2.1).

7.5 Survival. The following sections will survive any expiration or termination of the Agreement: 1.3, 1.4, 1.5, 2.1, 2.3, 2.5, 3, 4, 5.3, 6, 7.4, 7.5, 8.2 and 9.

8. Enforcement and Censure

8.1 Suspension. Participant acknowledges and agrees that Center must be able to institute quality control over the products that Participant claims meet the standards established by Center and represented by the Logo. If Center reasonably believes that Participant is in breach of any material term or condition of the Agreement related to the Product ("**Suspect Product**") or otherwise using the Logo other than as

expressly permitted under the Agreement, failing to comply with verification, marketing, or disclosure requirements of the Agreement, or using deceptive or unethical marketing or advertising practices for the Suspect Product, Center may immediately suspend Participant's right to use the Logo and Participant's participation in the Green-e® Energy Certification program with respect to the Suspect Product. During any such suspension, Participant will have no right to (and will not) use the Logo in connection with the Suspect Product, identify Participant as a participant in the Green-e® Energy Certification program or licensee of the Logo or Center for the Suspect Product, or identify or list Suspect Product as compliant with Center's certification standards. Further, in order to assist Center in its efforts to maintain its quality control processes, unless and until Participant provides Center with reasonably sufficient documentation evidencing that (a) Participant has cured the issues related to Participant's suspension and paid any related fees due under the Agreement (for example, late fees for failure to timely submit completed Product verification materials) and (b) Participant can and will meet the requirements set forth in the Agreement for participation in the Green-e® Energy Certification program and the right to use the Logo, Participant will not apply for certification under the Green-e® Energy Certification program for any product (including the Suspect Product). The suspension will not affect Participant's rights and obligations with respect to any Participant products (other than the Suspect Product) already participating in the Green-e® Energy Certification program pursuant to separate agreements between Participant and Center, but Participant may be subject to changes in fees as described in Appendix C: Fees to the Agreement if Center terminates the Agreement under Section 7.3 for the Suspect Product. This Section 8.1 is in addition to Center's rights under Section 7.3.

8.2 Notification to Customers. If Product is not in compliance with Center's certification standards but has been held out to Participant's customers as compliant, Participant will notify the applicable customers of such noncompliance and offer them with a refund for Product purchases and the right to terminate the applicable Product Agreement without charging customers any termination or other fees or expenses. In addition, Participant will cooperate with Center if Center wishes to communicate with Participant's customers, or with regulators and watchdog organizations (for example, the Federal Trade Commission, Public Utility Commission or Attorney General and other stakeholders, regarding such noncompliance and hereby authorizes Center and its agents to make such communications.

9. Miscellaneous

9.1 Entire Understanding. The Agreement, including this Appendix A: Green-e® Energy Certification Terms and Conditions and all other documents incorporated by reference in the Agreement, constitutes the entire Agreement between the parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions and agreements, whether oral or written, between the parties relating to the subject matter of the Agreement and all past courses of dealing or industry custom. Except as set forth in this Appendix A: Green-e® Energy Certification Terms and Conditions, the Agreement may not be modified or amended except by written Agreement signed by duly authorized representatives of both parties. If there is any conflict between this

Appendix A: Green-e® Energy Certification Terms and Conditions (on the one hand) and the Agreement and other documents incorporated by reference in the Agreement (on the other hand), this Appendix A: Green-e® Energy Certification Terms and Conditions will control.

9.2 Notices. Notices, requests, demands and other communications required or permitted under the Agreement will be deemed to have been duly given on the date of receipt, either served personally, by electronic mail (such as email), or mailed by first-class registered or certified mail, return receipt requested to (a) Center at the address below and (b) Participant at the address given in the main body of the Green-e® Energy Certification and Logo Use Agreement. The parties may from time to time designate another person or address in a notice delivered pursuant to this Section, but Participant will at all times ensure that its contact information is current.

Executive Director
Center for Resource Solutions
1012 Torney Ave, Second Floor
San Francisco, CA 94129
Notice@resource-solutions.org

9.3 Governing Law. The Agreement will be governed by the laws of the State of California without regard to its conflicts of laws provisions. Any dispute regarding the Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in San Francisco, California, and the parties irrevocably consent to the exclusive jurisdiction and venue of such courts.

9.4 Assignment. Participant will not assign, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, the Agreement or any of its rights or obligations under the Agreement, without Center's prior written consent. Any attempted assignment, transfer, delegation or disposal in violation of the foregoing will be void and will constitute a material breach of the Agreement. Center may assign, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, the Agreement or any of its rights or obligations under the Agreement, without Participant's prior written consent. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

9.5 Severability. If and to the extent that any court of competent jurisdiction holds any provision of the Agreement or any part of the Agreement to be illegal, invalid or unenforceable, the other provisions will remain in full force and effect and the illegal, invalid or unenforceable provision will be deemed replaced by a provision that most nearly reflects the intent of the parties in entering into the Agreement.

9.6 Relationship of the Parties; No Third Party Beneficiaries. The Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors and neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever. Center and Participant agree that the Agreement does not create nor will it be

construed to create any rights enforceable by any entity not a party to the Agreement and at no time will any entity be deemed to be a third-party beneficiary under the Agreement or to have any contractual relationship with either party pursuant to the Agreement. The Agreement is for the sole and exclusive benefit of the parties hereto.

9.7 Further Assurances. Each party agrees to execute and deliver (or cause the execution and delivery of) such other or additional documents and instruments, and to take such further actions, as may be reasonably requested by the other party consistent with the Agreement to evidence, enforce or otherwise effectuate the purposes and intent of the Agreement.

9.8 Waivers. The failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of the Agreement (including those related to Center's verification and compliance procedures), or to exercise any right or remedy upon the breach of the Agreement, will not constitute a waiver by either party of any breach of the Agreement.

9.9 Force Majeure. Neither party will be liable to the other for failure or delay in performing its obligations under the Agreement if such failure or delay is due to circumstances beyond its reasonable control, including acts of any governmental body, war, terrorism, insurrection, sabotage, embargo, fire, flood, earthquake, strike, interruption of or delay in transportation, and unavailability of, interruption of or delay in telecommunications or third party services necessary for purposes of performing under the Agreement.

9.10 Interpretation. For purposes of interpreting the Agreement, (a) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (b) the words "include" and "including" will not be construed as terms of limitation and will therefore mean "including but not limited to" and "including without limitation" (without regard to the inclusion or non-inclusion of such phrases); (c) the sections and other headings contained in this Appendix A: Green-e® Energy Certification Terms and Conditions are for reference purposes only, and will not affect in any way the meaning or interpretation of the Agreement; and (d) unless otherwise specifically stated, section references in these Green-e® Energy Certification Terms and Conditions refer to the sections of these Green-e® Energy Certification Terms and Conditions.

9.11 Counterparts. The Agreement may be executed in several counterparts, each of which will be an original, but all of which together will constitute one and the same document.