



THE INTERNATIONAL  
REC STANDARD

*Empowering Electricity Purchasers*

**The International  
REC Standard**

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Standard Agreement

# Standard Terms and Conditions - I-REC Participant

2015

Document Reference: STC-I-REC-P2015



## **1. Agreement**

This Agreement (hereinafter called "the Agreement") is made between I-REC Services BV (hereinafter called "the Company"), whose registered office is at: Utrechtseweg 310, 6812 AR Arnhem, The Netherlands, and [Name] (hereinafter called "the Participant") whose registered office is at: [Address].

## **2. Scope**

The I-REC Code and its Subsidiary Documents are incorporated into and form part of this Agreement. This Agreement and all subsequent amendments (including, without limitation, amendments to the I-REC Code and/or its Subsidiary Documents), constitutes the terms and conditions for the provision of Trade and Redemption Services for I-REC (International Renewable Energy Certificate)

This Agreement represents the whole agreement between the parties in respect of Trade and Redemption Services for I-REC and shall apply with regard all Accounts held by the Participant. The creation of an Account by the Participant shall constitute agreement that the terms of this Agreement shall encompass such Account.

## **3. Definitions**

Save for definitions expressly given, the terms in this Agreement that are identified by capitalisation, have the meanings assigned to them by the I-REC Code and its Subsidiary Documents.

## **4. General Obligations; Representations and Warranties**

Each party hereby agrees to:

- (a) Comply with this Agreement, including, without limitation, with the requirements of the I-REC Code and its Subsidiary Documents,
- (b) Act in accordance with all applicable laws, and
- (c) Contribute to the implementation of this Agreement, to the extent that both parties shall provide each other without delay all necessary information required by the application of this Agreement.

The Company shall, in the performance of its duties, roles and responsibilities under this Agreement, directly or through any other entity acting on its behalf, act with professional standards usually required of a services provider of this kind.

Each party represents and warrants that:

- (a) It is duly organised under the laws of jurisdiction of its formation, it has the full right, power and authority to execute, deliver and perform this Agreement, and it has been duly authorised by all necessary governmental, corporate, shareholder or other action to execute, deliver and perform this Agreement,



- (b) The entry into and performance by it of this Agreement do not conflict in any material respect with any relevant law or a judicial order applicable to it, any of its constitutive documents, any existing agreement instrument or document which is binding on it or any of its assets, and
- (c) Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms, subject only to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally.

## **5. Information Systems**

1. The Company provides access to the registration, trade, and redemption of I-REC Certificates by using an electronic registry with internet access (the I-REC Registry).
2. The Participant shall arrange, at his own cost, the necessary information technology architecture and interfaces which he needs in order to use the I-REC Registry. The details of the necessary information technology infrastructure and interfaces are contained in Schedule 3 hereof. The Participant shall be responsible for sufficient data security relating to the use of the I-REC Registry including account passwords.
3. The Company and its affiliates, employees, contractors and/or agents will act with due diligence in the provision of the information systems referred to herein.
4. The Company shall, subject to clause 13 below, be responsible for any damage caused to the Participant resulting from negligence, intentional default, or fraud on the part of the Company or any of its affiliates, employees, contractors and/or agents, when managing the information systems required to provide the registry services to the Participant.
5. The Company has the right to change the IT prerequisites of the use of the I-REC Registry. In the event of a material change, the Company shall inform the Participant in writing at least 30 calendar days prior to the implementation of such a change. In urgent cases (e.g. where system integrity is at risk) changes can be made without prior notice. The Company shall inform the Participant by email as soon as possible after the change has been made.
6. The Company shall inform the Participant by email and by notice on its website ten (10) days in advance of planned unavailability of the I-REC Registry. The Participant shall be informed of other unavailability preventing the use of the I-REC Registry as soon as reasonably possible.
7. The Company has the right to remove or suspend access to the I-REC Registry service by the Participant (a) if, in the reasonable opinion of the Company, there is misuse of the system by the Participant (including, without limitation, its employees, agents and other parties acting on the Participant's behalf in the performance of this Agreement), or (b) if the Participant is in breach of this Agreement.



8. The Participant agrees with the Company throughout the term of this Agreement:
- (a) to use the I-REC Registry, its associated website and I-REC documentation for the purpose of Trade and Redemption Services only;
  - (b) to attend training in the use of the I-REC Registry or to procure that at least one of its employees does so; when required by the Company, to attend such further training in such use at its own expense;
  - (c) not to cause or permit any person (except a person who has signed the non-disclosure and non-competition undertakings required by the Company) to use the I-REC Registry, its associated website and I-REC documentation at any time during the term of this Agreement;
  - (d) to notify the Company immediately upon discovery of any faults or defects in the I-REC Registry and/or its associated website and to co-operate fully with the Company in the diagnosis and cure of any such fault or defect;
  - (e) to use only the current version of the I-REC Registry available from time to time; and
  - (f) not to engage any person (except as authorised in advance by the Company) to provide support services in connection with the I-REC Registry and/or its associated website and to provide the Company, at the Participant's expense, with all necessary facilities, materials and records to enable the Company (or a third party engaged by the Company) to supply such support services.

## **6. Force Majeure**

1. For the purposes of this Agreement, force majeure means an occurrence beyond the reasonable control of the party claiming force majeure which it could not reasonably have avoided or overcome and which makes it impossible for it to perform its obligations hereunder, including, but without limitation, due to the failure of communications or computer systems.
2. If a party is fully or partly prevented due to force majeure from performing its obligations under this Agreement and such party complies with the requirements of this clause, no breach or default on the part of such party shall be deemed to have occurred and it shall be released from those obligations for the period of time and to the extent that such force majeure prevents its performance. No obligation to pay damages will then accrue.
4. In the event, and to the extent, the obligations of the party claiming force majeure are released by force majeure, the other party's corresponding obligations shall also be released.
5. The parties shall inform each other of the occurrence of force majeure as well as of its end without delay and shall use all commercially reasonable efforts to mitigate the effects of the force majeure.

## **7. Change Procedure; Enduring Access Provisions**

Each of the parties confirms that:

- (a) the Subsidiary Document 05 (Change Management) applies hereto (as such may be amended by the Company from time to time); and



(b) it will use its best efforts to amend this Agreement if such amendment is necessary, required or desirable (in the reasonable opinion of either party) due to operational, legal or compliance reasons.

The Company may transfer this Agreement to a new service provider with the prior written consent of the Participant. If no new service provider has been appointed, the Company can terminate this Agreement providing no less than six (6) months' notice and the Participant shall have the right to receive a refund of fees paid under this Agreement for any part of the services that have been paid for but have not been effectively provided.

If the Company ceases to provide access to the I-REC Registry, the Participant has the right to retrieve data from the I-REC Registry pertaining to its Accounts thereon.

## **8. Fees**

The Participant shall timely pay all Fees and Charges. The Fees and Charges shall be calculated in accordance with the Fees and Charges applicable at the time of the Company's issuance of an invoice. Current Fees and Charges are set out in Schedule A of this Agreement. The Company retains the right unilaterally to change its Fees and Charges.

Changes to the Fees and Charges shall be implemented no more frequently than annually, with effect 1 January each year, such change to be notified to the Participant in writing (including email) no later than 1 October of the preceding year and thereafter being adopted as a replacement to Schedule A of this Agreement.

## **9. Payment**

Payment of an invoice issued by the Company is recorded when funds are cleared for value into the nominated bank account stated on the invoice.

Full payment must occur within 30 days of the date of issue of the relevant invoice. Failure to make payment within 45 days will result in the suspension of the Account access for any Account which is assigned to the Participant. The suspension will only be lifted upon clearance of the due payment. The Participant shall not be entitled to any compensation under this Agreement or otherwise arising out of such suspension.

If the Participant shall fail to pay any sum of money which is due and payable pursuant to this Agreement, it shall in addition to the amount not properly paid pay simple interest at a rate of 3% above the Bank of England Base Lending rate prevailing for the period until payment in full is made.



The Participant shall remain responsible for payment of all invoiced fees regardless of whether suspension has been applied until such time as full payment has been cleared.

If the Participant disputes any amount invoiced, it shall notify the Company of the nature of the dispute within ten (10) business days of receipt of the invoice giving all relevant details. Pending the resolution of the dispute the Participant shall be entitled to withhold payment of the invoice. All disputes relating to invoices shall be resolved in accordance with clause 18.

## **10. Assignment**

Each party may:

- (a) Assign this Agreement only with the written consent of the other party, such consent not to be unreasonably withheld or delayed;
- (b) Assign this Agreement to an associated company of equivalent or greater creditworthiness at any time, without consent of the other party. The assignment shall only become effective upon notice being received by the other party and provided that any credit support document issued or agreed on behalf of the assigning party has first been reissued or amended to support the obligations of the associated company for the benefit of the other party.

## **11. Term and Termination Rights**

This Agreement shall come into force as of the Effective Date and shall have a Minimum Term of twelve (12) months. On expiry of the Minimum Term, this Agreement may be terminated by either party by giving the other party 30 days' prior written notice of termination in the case of termination by the Participant and six (6) months' prior written notice of termination by the Company (each case being "Ordinary Termination").

In the event of Ordinary Termination, the Agreement shall remain legally binding on the parties until, but only in respect of, all rights and obligations already created or existing under the Agreement prior to the date of the Ordinary Termination are fully performed by both parties.

Nevertheless, if a party fails to perform any of its obligations (other than when such obligation is released pursuant to the force majeure clause) under this Agreement, and such failure is not cured within five (5) business days of a written demand, the other party shall be entitled to immediately cease to perform its obligations.

And in the case that (a) a party fails to perform any of its obligations on a continued and repeated basis, or (b) a party voluntarily commences or is subject to the commencement of a composition or arrangement of any kind with its creditors (including, without limitation, voluntary winding-up), or (c) a party commits any fraud or any other unlawful or criminal act in connection with this Agreement or its operation, the other Party (the "Terminating Party") may terminate the Agreement ("Early Termination") by giving notice to the



defaulting party. A notice of Early Termination may be given by telephone if that notice is confirmed in writing within two (2) business days.

In case of Early Termination, the Terminating Party shall have the right to be compensated for damages as provided for by English Law. Notwithstanding the preceding sentence, the parties understand and confirm that in case of the Company being the Terminating Party (a) it is reasonable to assume that, in the absence of the Early Termination, this Agreement would have persisted for at least six (6) months from the date of the Early Termination, and (b) consequently, that the reasonable pre-estimate of the Company's loss in case of the Early Termination is the amount equal to six (6) monthly Fees and Charges (that have been payable by the Participant under this Agreement during the six (6) month period preceding the Early Termination of this Agreement).

This provision shall survive termination of this Agreement.

## **12. Notices**

Every notice, request, demand, or other communication under this Agreement shall be issued in accordance with the details set out in Schedule B of this Agreement. Each party is responsible for notifying the other party of any changes to the details in Schedule B of this Agreement and ensuring confirmation of receipt of such change notification.

Any notice, request, demand or other communication to be given or made under this Agreement shall be deemed to have been delivered, in the case of any notice, request, demand or other communication given or made by facsimile or e-mail when despatched, unless despatched outside normal business hours, when it shall be deemed to have been delivered on the next business day following the date on which it was despatched or, in the case of any notice, request, demand or other communication given or made by letter, posted by registered mail, one (10) business days after the registered delivery date.

## **13. Liability**

The parties shall not be liable for indirect losses incurred by one of the parties unless the losses arise from gross negligence, intentional default or fraud on the part of the other party. Any organisation acting as Issuer, its representatives, or any other of its members cannot be held liable for the actions of the Company.

Each party has a duty to use its best endeavours to limit the extent of the loss caused. If the injured party does not implement adequate measures to limit the extent of the damage, compensation may be reduced. Unless otherwise provided by governing law,



- (a) The Company's liability to the Participant, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, arising out of or in connection with this Agreement shall be limited to (i) ten thousand (10,000) United States Dollars per incident, and (ii) a maximum aggregate amount of thirty thousand (30,000) United States Dollars; and
- (b) The Participant's liability to the Company, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, arising out of or in connection with this Agreement shall be limited to (i) ten thousand (10,000) United States Dollars per incident, and (ii) a maximum aggregate amount of thirty thousand (30,000) United States Dollars.

#### **14. Integrity of Certificates**

The Company and the Participant shall co-operate (to the extent within their power) to ensure that no unjust enrichment occurs as a result of an error in the course of the processing of a Certificate or as a result of any unauthorised access to, or malfunctioning of, the I-REC Registry; and for that purpose Certificates may be Withdrawn or amended by the Company, having regard to the objective of securing the accuracy of the Certificates.

#### **15. Intellectual Property**

1. Any and all intellectual property in the I-REC Registry, its associated website, and I-REC documentation is owned and shall remain to be owned by the Company (or, as it may be, a third party) and shall not (either wholly or partially) be transferred to the Participant under or pursuant to this Agreement.
2. The Company grants to the Participant a non-exclusive, non-transferable licence to use the I-REC Registry, its associated website, and I-REC documentation solely to enable the Participant to enjoy Trade and Redemption Services.
3. Notwithstanding clause 15.2, to the extent that the intellectual property in any part of the I-REC Registry, its associated website, and I-REC documentation is owned by a third party and that third party's consent is required before the Company can grant the licence set forth in clause 15.2, the Company shall not be required to grant that licence in respect to that part of the I-REC Registry, its associated website, and I-REC documentation unless and until the third party's consent is obtained. The Company shall use its reasonable endeavours to obtain such consent timely.
4. Any licence allowing the Participant to use third party owned parts of the I-REC Registry, its associated website and I-REC documentation will be subject to the terms imposed by that third party. The Participant shall indemnify the Company against all losses, claims, damages and expenses incurred by the Company because of the failure by the Participant to comply with the third party terms, provided that:
  - (a) before the non-compliance the Company had provided the Participant with a copy of the third party terms;





- (b) the non-compliance is not caused by the act or omission of the Company; and
  - (c) the Company uses all reasonable endeavours to mitigate the loss which is subject to this indemnity.
5. Neither party shall do or omit to do, or authorise any third party to do, or omit to do, any act which is inconsistent with the rights, ownership or use (as the case may be) of intellectual property of the other party or any third party.
6. For the purpose of this Agreement, "intellectual property" means: (a) patents, utility models, supplementary protection certificates, petty patents, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know-how), plant variety rights, registered designs, rights in copyright (including authors' and neighbouring or related rights), database rights, design rights, trademarks and service marks; (b) all registrations or applications to register any of the items referred to in paragraph (a); and (c) all rights in the nature of any of the items referred to in paragraphs (a) or (b) including continuations and divisional applications, reputation, personality or image, trade names, business names, brand names, logos, domain names and URLs, rights in unfair competition and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction.

## **16. Confidentiality**

Information about individuals and organisations held within the I-REC Registry is held confidentially and will only be used by the Company to provide the registry services in accordance with the I-REC Code and its Subsidiary Documents.

Any information of commercial or sensitive nature as per the Participant reasonable understanding shall be treated as confidential information by both parties. Save in case of disclosure required under applicable law or official decision, disclosure of such information requires prior written consent of the relevant party. The Company has the right to verify personal data provided by the Participant in order to comply with international anti-fraud standards. This may include the disclosure of personal information to the relevant national and international authorities.

## **17. Tax**

All amounts referred to through this Agreement, including the Schedule, are exclusive of any applicable Value Added Tax (VAT) and withholding or similar taxes.



## **18. Governing Law and Dispute Resolution**

This Agreement and any dispute or non-contractual obligation arising out of or in connection with this Agreement shall be governed by, and construed in accordance with the law of England and Wales. Each party hereby submits to the exclusive jurisdiction of the courts of England and Wales over any dispute arising out of or in connection with this Agreement.

## **19. Amendments**

The Company may make amendments to the terms of this Agreement (in particular, but without limitation, to the I-REC Code and its Subsidiary Documents). Any unilateral changes to this Agreement made by the Company will be notified to the Participant in writing (including email) not less than 90 days prior to becoming effective.

## **20. Counterparts**

This Agreement may be executed in one or more parts by the parties on separate counterpart or facsimile copies each of which when so executed by any party shall be an original but all executed counterpart or facsimile copies shall together when delivered constitute but one agreement. This Agreement shall not be completed delivered or dated until each party has received counterpart or facsimile copies validly executed by all other parties.

## **21. Cumulative Remedies**

Any remedy or right conferred upon any party for breach of this Agreement shall be in addition to and without prejudice to all other rights and remedies available to it.

## **22. Further Assurance**

Each party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

## **23. Severance and Invalidity**

If any provision of this Agreement is held by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such provision had not originally been contained in this Agreement. In the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision deleted.



**24. Contracts (Rights of Third Parties) Act 1999**

This Agreement does not create any right enforceable by any person who is not a party to it under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

**25. Acceptance**

Signed in acceptance of the above terms and conditions of business.

For and on behalf of the Company:

For and on behalf of the Company:  
.....  
Signature:  
.....  
Name:  
.....  
Position:  
.....  
Date:  
.....

for and on behalf of the Participant:  
.....  
Signature:  
.....  
Name (printed):  
.....  
Position:  
.....  
Date:  
.....



## **A Fees and Charges**

The Fees and Charges detailed in this Schedule A apply effective 1 January 2015.

### **A.1 Participant Fees**

Fees for a Participant are:

- Organisation Registration: €500 to open account; and
- Organisation Annual Fee: €2,000 per account holder; and
- Certificate Redemption: €0.070 per MWh.



## B Communication Details

Every notice, request, demand or other communication to the Participant shall be made in writing by registered mail or facsimile transmission or e-mail, to the address or facsimile number and marked for the attention of the person(s) set out below:

Name:	[_____]
Address:	[_____]
Postal Code:	[_____]
City	[_____]
Country	[_____]
Phone number	[_____]
E-mail address	[_____]
Fax number	[_____]

Every notice, request, demand or other communication to the Participant shall be made in writing by registered mail or facsimile transmission or e-mail, to the address or facsimile number and marked for the attention of the person(s) set out below:

Name:	[_____]
Address:	[_____]
Postal Code:	[_____]
City	[_____]
Country	[_____]
Phone number	[_____]
E-mail address	[_____]
Fax number	[_____]